18-596

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~648.~~ 352

S. W. LITTLE, D. B. ALEXANDER, AND MARTHA, HIS WIFE, S. G. OWEN, R. H. OAKLEY, ET AL., APPELLANTS,

vs.

EZEKIEL GILES, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

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1 Pleas before the Honorable Elmer S. Dundy, judge of the district court of the United States for the district of Nebraska, within the eighth judicial circuit, sitting in the circuit court of the United States for said district of Nebraska, at the term of May, A. D. 1884.

Be it remembered that on the 28th day of February, 1882, a transcript was filed in the office of the clerk of said circuit court, which said transcript is in words and figures following, to wit:

Be it remembered that heretofore, to wit, on the 27th day of January, 1882, a petition and bond was filed in the office of the clerk of the district court in and for the county of Lancaster, State of Nebraska, in words and figures following, to wit:

In the District Court of the 2d Judicial District of Nebraska in and for Lancaster County.

S. W. LITTLE, SAMUEL ARBUCKLE, D. B. ALEXANDER, A. J. SAWYER, S. G. Owen, Lorenzo Asmussen, R. H. Oakley, Sarah J. Purcell, A. P. S. Stewart, Thomas R. Clark, Mary A. McElhainney, D. C. Kinsell, Hannah Selwood, Alexander C. Huestis, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestis, Allen W. Hawley, A. F. Lewis, Samuel Arthur, G. F. Thornton, Sarah Cummings, William H. Rundell, Jacob Freedman, O. P. Austin, J. A. Buckstaff, Mary T. McNair, George DeCamp, Wilbur F. Kellogg, Elizabeth N. Chase, Sarah A. Gable, Samuel Aughey Clarinda, A. Bumstead, Elizabeth Paden, Martha E. Snowden, Thomas Woods, Joseph S. Hoagland, Elizabeth W. Pillsbury, Henry V. Hoagland, W. S. Garrison, C. L. Hooper, S. E. Story, V. E. Farmer, Josephine St. Louis, Frank J. Wassika, Ellen N. Miller, John H. Scwabold, Hellen Webber, Samuel Henderson, Christine Bohlman, Joseph Richardson,
2 Patrick Lyons, W. Sanford Gee, Allen Coggswell, M. B. Cheney, Mary E. Maloney, Emma A. Beach, Barret F. Loath, Francis D. Howell, L. S. Howell, Samuel D. Bacon, Henry S. Gordon, Executor of the Estate of E. T. Tuttle, Deceased; Jacob Freedman, Samuel T. English, Guy A. Barnum, H. O. Snow, George Warden, D. D. Muir, George W. Severance, Rody A. Prindell, Mina W. Brown, W. J. Van Dorn, and G. W. Lashus, Plaintiffs,

vs.

EZEKEIL GILES, L. C. BURR, H. H. WHEELER, ALBERT L. DAWSON, William R. Dawson, Sarah H. Dawson, M. C. Dawson, M. S. Dawson, A. A. Kniceley, William R. J. Goodin, Melita C. D. Tillman, Defendants.

The plaintiffs named above, severally complaining of the said defendants, aver that on the 15th day of June, A. D. 1869, and thence to his death, Jacob Dawson was seized in fee-simple and possessed of diverse pieces and parcels of real estate, to wit: The west half southeast quarter of section No. nineteen (19), township No. ten (10) north of range No. seven (7), and the east half of the northeast quarter and the southeast quarter of the southeast quarter

of section No. thirty-five (35), in township No. (10) north of range No. six (6) east, of the sixth principal meridian, in Lancaster county, State of Nebraska; also lots numbered three (3), four (4), five (5), and six (6) in block fifty-four (54), in the then town, now city, of Lincoln, in the county and State aforesaid; that on the last-named date the said Jacob Dawson made and executed his last will and testament, which was in the words and figures as follows, to wit: "After all my lawful debts are paid and discharged the residue of my real and personal property I bequeath and dispose of as follows, to wit: To my beloved wife, Edith J. Dawson, I give and bequeath all my real estate and personal — of which I may die seized, the same to remain and to be hers, with full power, right, and authority to dispose of same as to her shall seem meet and proper so long as she remains my widow, upon the express condition that if she shall marry again then it is my will that all of the estate here bequeathed or whatever may remain shall go to my surviving
3 children, share and share alike, and in case any of my children shall have deceased leaving issue, then the issue so left shall receive the share to which said child would be entitled. I likewise constitute and appoint my said wife, Edith J., to be executrix of my last will and testament." That on the 22d day of June, A. D. 1869, the said Jacob Dawson died in Lancaster county, State of Nebraska. The said last will and testament of the said Dawson was duly proved and admitted to probate in the probate court of said county, and letters testamentary thereon were issued out of said court to the said Edith J., who assumed the duties of such executrix.

The plaintiffs further state that at the time of the making and execution of the said last will and testament as aforesaid by the said Jacob Dawson, and until his death, he, the said Dawson, resided with his family in the basement of a stone building built of sandstone, the erection of which building was only commenced a short time before said Dawson's last illness, and no portion of said building was constructed except that the stone walls were laid one story above the basement, the floor in the basement had been put down, and a temporary roof put on; that the place thus occupied for his residence as aforesaid was in no fit or proper condition for a residence, but was a damp, dark, gloomy, and unwholesome place to occupy for any purpose, and especially as a residence for his said family; that the said structure or building was so planned and so poorly constructed that it was of no value whatever; that the said Dawson left no personal property of any value except, among other things, three or four horses, two or three cows, and some farming implements, the value of all of which did not exceed in the aggregate the sum of five hundred dollars; that all of the real estate of which the said Dawson died seized was not worth more than ten thousand dollars at the time he made and executed his said last will and testament; that said Dawson was, on the said 15 day of June, and at the time of his death, largely indebted to sundry and
4 divers persons in divers sums of money, amounting in the aggregate to upwards of five thousand dollars, and was at the time aforesaid insolvent and unable to pay his debts; that after

the decease of said Dawson it became and was necessary for his widow, Edith J., to immediately build and erect a dwelling-house suitable to occupy as a residence for her family; that in order to do so the said widow was obliged to raise money on the credit of the property conveyed to her by the said last will and testament of her said husband, which she accordingly did, and with the money thus secured she caused to be erected a frame dwelling-house, at the cost of about two thousand five hundred dollars; that in order to pay and discharge the indebtedness thus incurred by her and the debts aforesaid of the said Jacob Dawson, then deceased, together with the obligations incurred by reason of the last sickness and funeral expenses of the said Dawson, the said Edith J. was compelled to sell and dispose of a large portion of the real estate conveyed to her by the said last will and testament of her said husband as fast as purchasers could be found therefor. And the plaintiffs allege that a portion of the real estate sold and conveyed by her for such purposes were the following described properties, to wit: Nineteen feet and five and one-half inches off of lots five (5) and six (6) in block fifty-four (54) in the city of Lincoln, State of Nebraska, according to the recorded plat described more fully as eighteen feet and nine and one-half inches off the west side of lot five (5), and eight (8) inches off the east side of lot (6) in the said block, commencing at the center of the west wall of the building once belonging to Lindus Cody, and running due west nineteen (19) feet five and one-half (5½) inches to or near the center of the wall of the building now owned by S. W. Little next west, and which is now owned and in the possession of plaintiffs, Samuel G. Owen and R. H. Oakley; also, lot six (6) in said block fifty-four (54), except eight (8) inches off of the east side thereof now owned and in the possession of the plaintiff, S. W. Little.

Also a portion of lots four (4) and five (5) in the same block, now owned and in the possession of the plaintiff, D. B. Alexander. Also a portion of lots three (3) and four (4), now owned and in the possession of the plaintiff, A. P. S. Stuart. That prior to the conveyance of the said several pieces of property last above mentioned by the said Edith J. Dawson the said lots, pieces, or parcels of land were unimproved and vacant, but that subsequent to such conveyances as aforesaid the guarantees of the said Edith J. Dawson laid out and expended large sums of money in the erection and building of two-story brick buildings on all of said pieces or parcels of land, to be used for business purposes, and that the money so laid out and expended by them amounted, in the aggregate, to the sum of twenty-five thousand dollars and upwards. The plaintiffs further allege that some time subsequent to the death of the said Jacob Dawson his said widow, Edith J., caused to be laid out and surveyed, under the laws of this State in such case made and provided, the east half (½) of the northeast quarter (¼) of section thirty-five (35), town. number ten (10) north of range number six (6) east, into lots and blocks, which was duly platted, and the plat thereof was filed for record in the office of the county clerk of the county of Lancaster, State of Nebraska, on the 15th day of June, A. D. 1870, and

thereafter the land above described was designated and known as Dawson's addition to South Lincoln; that the said Edith J. Dawson, for the purpose of raising money with which to discharge that portion of the indebtedness aforesaid which had not then been paid, and desiring to advance to her oldest son, Hampton Dawson, who was about twenty-one years of age, a sum of money out of her estate sufficient to enable her said son to engage in a business suitable to his talents and necessary for his employment, proceeded to offer for sale the lots and blocks so laid out and platted as aforesaid.

And the plaintiffs further aver that by her deeds of con-
6 veyance, with covenants of warranty duly executed and delivered, she, the said Edith J. Dawson, did, from time to time, to sundry and divers persons, convey all, or nearly all, the lots and blocks in the said Dawson addition to South Lincoln, and that the following-named plaintiffs, by reason of the conveyances so made as aforesaid by the said Edith J. Dawson, have become, and are, seized in fee-simple of the real estate in said Dawson's addition to South Lincoln, in Lancaster county, Nebraska, set forth and described opposite their respective names, to wit:

Sarah Cummings, lots 10, 11, and 12, block 29.
Jessie P. Chipman, lots 1, 2, and 9, in block 29.
Jacob Freeman, lots 7 and 8, in block 29, and 11 and 12, block 47.
J. A. Buckstaff, lots 5 and 6, block 29.
" " 7, 8, and 9, block 32.
" " 5, 6, 7, & 8, block 34.
George D. Camp, lots 3 and 4, block 29.
Elizabeth N. Chase, lots 10, 11, and 12, block 31.
Samuel Aughey, lots 7, 8, 9, block 31.
Elizabeth Paden, lot 5, block 31.
Samuel G. Owen, lot 4, block 31.
D. B. Alexander, lot 3, block 31.
Joseph S. & Henry V. Hoagland, lot 2, block 31.
C. L. Hooper, lot 1, block 31.
V. E. Farmer, lot 12, block 32.
Frank Z. Wassika, lot 11, block 32.
John H. Schwabold, lot 10, block 32.
Samuel Henderson, lots 5, 6, block 32.
Joseph Richardson, lot 4, block 32.
W. Sanford Gee, lot 3, block 32.
Mathew B. Cheney, lots 1, 2, block 32.
Samuel Arbuckle, lots 9, 10, 11, 12, bl'k 33; lot 10, block 45.
Henry Chidler, lot 8, block 33.
A. J. Sawyer, lot 7, block 33; lots 5, 6, block 47.
7 Lorenzo Mussen, lots 4, 5, block 33.
Sarah J. Purcell, lot 3, block 33.
Thomas R. Clark, lot 2, block 33.
Mary A. McSweeney, lot 1, block 33.
D. C. Kinsell, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, block 34.
Hannah Selwood, lot- 3, 4, block 35.
Alexander C. and Charles D. C. Huestis, lots 5, 6, 7, 8, block 36; lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, block 37.

Charles Hanna, lot 9, block 37.
William H. Rundell, lots 7, 8, 9, 10, 11, 12, block 38.
O. P. Austin, lot 6, block 38.
Mary T. McNair, lot 5, block 38.
Wilbur F. Kellogg, lot 4, block 38.
Sarah A. Gable, lots 1, 2, 3, block 38.
Celinda A. Bumstead, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, block 39.
Martha E. Snowden, lots 1, 2, 3, 4, 5, 6, block 40.
Thomas Woods, lots 7, 8, 9, 10, 11, 12, block 41.
Eliza N. Pillsbury, lots 1, 2, 3, 4, 5, 6, block 41.
Charles C. Snowden, lots 1, 2, 3, 9, 10, 11, 12, block 42; lots 7, 8, 9, block 47.
Josephine St. Louis, lots 7, 8, block 42.
Ella N. Miller, lots 4, 5, block 42.
Hellen Webber, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, block 43.
Christian Bohlman, lots, 10, 11, 12, block 44.
Patrick Lyons, lot 9, block 44.
Allen Coggswell, lots 7, 8, block 44.
Mary E. Maloney, lot 4, block 44.
Bartlett F. Loath, lot- 11, 12, block 45.
Francis D. Howell, lot 8, 9, block 45.
Lavender S. Howell, lot 7, block 45.
Samuel D. Bacon, lots 1, 2, 3, 4, 5, 6, block 45.
Henry S. Gordon, executer of the estate of E. H. Tuttle, deceased, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, block 46.
8 Samuel L. English, lot 10, block 47.
Adam and Louisa Bax, lots 1, 2, block 47.
Guy C. Barnum, lots 3, 4, block 47.
D. D. Muir, lots 11, 12, block 48.
" 3, 4, " 48.
" 7, 8, " 49.
George W. Severance, lot 10, block 48.
Rhoda A. Prindell, lots 5, 6, block 49.
Mina W. Brown, lots 1, 2, 3, 4, block 49.

The plaintiffs further aver that at the time of the conveyance aforesaid by the said Edith J. Dawson aforesaid the lots and blocks above described opposite the names of the respective owners thereof were vacant and unimproved, and that since such conveyances so made by the said Edith J. Dawson as aforesaid large sums of money have been laid out and expended by many of the grantees under such conveyances and many of the plaintiffs herein in the erection and construction of valuable improvements on said lots, consisting of dwelling-houses, barns, and out-houses, fences, and other convenient and necessary buildings for the occupancy of the said grantees, plaintiffs, and their tenants now in the possession of the same, and that all of the said improvements so made as aforesaid on the lots and blocks aforesaid are of the value of twenty thousand dollars and upwards; that many of the parties plaintiff herein are poor persons, having no other property than the real estate owned

by them in the said Dawson addition to South Lincoln, and by reason thereof are unable to employ counsel to litigate their respective rights in the premises in separate and distinct suits; that the said Edith J. Dawson did, some time prior to her reputed marriage to one Pickering, whose first name is unknown to these plaintiffs, by her deeds duly executed and delivered, and in pursuance of her right and power so to do under the last will and testament of the said Jacob Dawson, deceased, as aforesaid, conveyed the title in fee-simple of the following-described real estate to the grantees named in her deeds so made, to wit: the southeast quarter (¼) of the southeast quarter (¼) of section thirty-five (35), in township number ten (10) north, range number six (6), and the west half (½) of the southeast quarter (¼) of section number nineteen (19), in township number ten (10) north of range number seven (7), in Lancaster county, State of Nebraska, and that the plaintiffs, W. J. Van Dorn and G. W. Lashus, have become vested, and by reason of the conveyance so made as aforesaid by the said Edith J. Dawson seized in fee-simple of the title of the said southeast quarter (¼) of the southeast quarter (¼) of section number thirty-five (35), township number ten (10) north, range number six (6).

And the said plaintiffs, A. W. Hawley, George Warder, H. O. Snow, and Samuel Arthur, have, by reason of the conveyances so made as aforesaid and conveyances made subsequent thereto, become seized of the title in fee-simple in the said west half (½) of the southeast — (¼) of section number nineteen (19), township number ten (10) north of range number — (7).

That the said Hawley is the owner of sixty acres of said tract of land; that the said Samuel Arthur is the owner of five (5) acres; that said George Warder is the owner of ten (10) acres, and the said H. O. Snow is the owner of five acres thereof.

The plaintiffs further state that neither of the said defendants nor any of them make any claim to the real estate or any of it herein described, except by, through, and under the certain deeds of conveyances, to which reference is hereinafter made, and which conveyances *was* made and executed by the heirs of the said Jacob Dawson, deceased, and that the only and sole claim of such heirs and the defendants herein is made under the last will and testament and the conveyances aforesaid; that the defendants and each of them claim to have some interest in the several tracts, pieces, and parcels of land herein described under the provisions of the said last will and testament and the deed of conveyances subsequently made by the said heirs as aforesaid; but these plaintiffs allege the truth to be that neither or any of the defendants herein have any valid or equitable claim, title, or interest whatsoever in or to any of the said real estate.

And the plaintiffs further allege that on or about the 15th day of September, 1879, the said defendants, Dawsons, heirs of the said Jacob Dawson, deceased, and their wives, and the defendants, Highland H. Wheeler and Lionel C. Burr, conspired and confederated together for the purpose and with the wicked and fraudulent intent

to cloud and encumber the titles of the plaintiffs to their said several lots, tracts, and parcels of land, and to disturb and harass them in the possession of the same, by various and vexatious suits and proceedings at law, by means whereof put the plaintiffs to great trouble and expense, and to extort large sums of money from them for the purpose of carrying said conspiracy into effect and effecting the designs of the same aforesaid said defendants, Dawsons, as the heirs of Jacob Dawson, without any consideration whatever except said fraudulent as conspiracy aforesaid, but for the pretended consideration of seventy-five thousand ($75,000) dollars executed and delivered to the said Highland H. Wheeler and the said Lionel C. Burr a certain pretended deed or deeds of conveyance assuming and pretending to quit-claim and convey, but without covenants of warranty or of title of any other covenants whatever, all of the said real estate of which the said Jacob Dawson died seized as aforesaid. In consideration whereof, and as a part of said conspiracy aforesaid, it was agreed that the said Wheeler and Burr should pay, deliver over, and convey to said defendants Dawsons one-fourth of whatever goods, effects, chattels, or money they should by means of said conspiracy and the suits, actions, and proceedings at law, and otherwise by them to be commenced and prosecuted as aforesaid, be able to extort or obtain from these plaintiffs or any of them, and that the said Wheeler and Burr should retain as their own the balance thereof. And thereupon, by agreement of said par-
11 ties and for the purpose and upon the consideration of further and better carrying said conspiracy into effect and to insure the division of said expected plunder between the said parties according to the terms of said agreement the said defendants, Wheeler and Burr, on or about the 27th day of April, 1880, executed a pretended deed or pretended deeds of conveyance of all of said property pretending to quit-claim and convey, but without covenants of warranty or of title or any other covenants whatever, and for the further purpose of enabling such suits, actions, and proceedings to be prosecuted in the United States circuit and district courts of the district of Nebraska, and for no other consideration whatever, but for the pretended consideration of seventy-five thousand (75,000) dollars to the defendant, Ezekiel Giles, who resides in the State of Iowa and who is a man of no property or pecuniary means whatever, but that said pretended deeds were never in fact delivered to or accepted by said Giles, but were by the said Wheeler and Burr, together with the pretended deed or deeds so executed and delivered by the said Dawsons to said Wheeler and Burr as aforesaid, all of said deeds being witnessed and acknowledged in form sufficient to entitle them to record on or about the 11 day of January, A. D. 1882, filed for record in the clerk's office, Lancaster county, Nebraska, and recorded in the book of deed records in said office, and that of said pretended deeds now remain on record as aforesaid, whereby it is alleged and pretended by the defendants that the legal title and ownership of all of said property is in the said defendant Giles.

And the plaintiffs further allege that the said defendants further, for the purpose of carrying said conspiracy into effect and in the

actual execution thereof have, for more than a year last past, falsely and fraudulently represented and pretended to these plaintiffs, and publicly and generally to all persons, that by the terms of said will and in accordance with the intent of said testator said will only conveyed to the said Edith J. Dawson a life estate in said
12 real property subjected, to be determined and divested by the marriage of said Edith J. Dawson, and that the said Edith J. Dawson had no right, power, or authority, under the terms of said will or in accordance with the intent of said testator, at any time or for any purpose, to sell or convey to the plaintiffs, or any person whomsoever, the fee-simple title to any of said land, and that on the 15th of November, 1879, the said Edith J. Dawson did intermarry with one Pickering, whereby all interest, right, title, estate, and right of possession of whatever nature of these plaintiffs, and every of them, in or to their said several lots, tracts, pieces, and parcels of land, or any of them, did, on said last-named day, wholly and utterly cease and determine, and have commenced and have threatened, and still threaten and are about to commence, diverse and vexatious suits in ejectment and suits and proceedings in law and in equity in the said courts of the United States and in the courts of this State, for the purpose of recovering damages by the way of rents from these plaintiffs, and from their several tenants and occupants of said several lots and parcels of land for the purpose of recovering possession of said lots and parcels, together with the said buildings, structures, and improvements so put and erected thereon by these plaintiffs as aforesaid, and have threatened and still threaten and are about to cause the said defendant Giles, who is the father-in-law of the said defendant Burr, to execute and deliver and cause to be recorded deeds of conveyance to divers persons and corporations to the plaintiffs unknown, of each and all of the said several lots and parcels belonging to these plaintiffs, by means of all of which said false and fraudulent claims, publications, and petenses, and by means of said threats and suits aforesaid, the said defendants have grievously injured, disturbed, and annoyed these plaintiffs in the enjoyment of their said properties, and have destroyed the market value and salableness of the same, and have expelled
13 and threatened to expel and drive away the tenants of the plaintiffs of said property and deprive the plaintiffs of the rents, issues, profits, and possession of the same, besides putting the plaintiffs to great trouble and expense in the hiring of counsel and the paying of fees of clerks, sheriffs, constables, marshals, and witnesses in and about the necessary defense of said vexatious and champertous suit and proceeding at law and in equity aforesaid.

And these plaintiffs further say that a very large and considerable — of the said lots and parcels of land so owned and occupied by these plaintiffs, including the lands so owned and occupied by the plaintiffs Van Dorn and Lashus and by the plaintiff Allen W. Hawley, were so sold and conveyed by the said Edith J. Dawson for the purposes by and through the negotiations of the defendant, Lionel C. Burr, subsequent to the first day of January, A. D. 1874, who at all times since said last-named date has been, and now is, the con-

fidential agent and attorney of the said Edith J. Dawson and of the said heirs of the said Jacob Dawson, deceased, and that at the time of the sale and conveyances of each of said lots and parcels as aforesaid, and the payment of the purchase price therefor by the grantees thereof, and as a main and principal inducement thereto, the said Burr expressly represented and stated to the said several grantees, and especially to the said plaintiffs Van Dorn and Lashus, and to the grantees of said lands so owned by the plaintiff Hawley, upon his professional honor as an attorney-at-law and as such confidential agent and attorney as aforesaid, that said will conveyed a fee-simple title absolute to said property to said Edith J. Dawson, with full right, power, and lawful authority to sell and convey the same in manner the same was sold and conveyed, all which representations were then, and at all times have been, well known to all of the several defendants herein, as well as the fact that the said representations and statements and full faith and reliance thereon were the
14 sole consideration of the payment of the purchase-money for all of said lots and parcels.

Plaintiffs further say that all the several lots and parcels of land now owned and occupied by these plaintiffs as aforesaid were so sold and conveyed by the said Edith J. Dawson prior to the 15th day of November, 1879. Plaintiffs further say that the said defendants, Highland H. Wheeler and Lionel C. Burr, at and during all the times mentioned in this petition subsequent to the first day of January, 1874, have been, and they now are, attorneys-at-law duly admitted to practice in the Supreme Court and in the several district courts of this State and of the several United States courts of the State of Nebraska.

Wherefore these plaintiffs pray the judgment and decree of this court that the said defendants, and each and all of them, and all persons claiming through and under them, or any of them, or acting or assuming to act by the authority or with the connivance of the defendants, or any of them, be restrained and enjoined during the pendency of this action from in any manner, by suit, action, or proceedings at law or in equity in the courts of this State or any other courts, assailing, traducing, or questioning the title or possession or right of possession of these plaintiffs, or any of them, in or to said lots, tracts, or parcels of land, or any of them, or by such suits or proceedings, or in any other manner, to interfere with or question the possession of these plaintiffs, or any of them, or their tenants or other persons holding under them to any of said lots or parcels of land, or to the rents, issues, profits, use, or occupation of the same, or any of the same, and that the said defendants, and each and all of them, be likewise restrained during the pendency of this action each and all of them from executing, acknowledging, or delivering, or authorizing, advising, or conniving at the execution, acknowledgment, or delivery of, or the recording or filing for record or any deed or pretended deed or instrument of writing conveying
15 or incumbering or pretending or assuming to convey or encumber or in any manner affect the title, occupancy, or possession or right of possession of said lots or parcels of land, or any

of them, or interfering with the same in any manner whatever; that on the final hearing of this cause said injunction be made perpetual.

2d. And the plaintiffs further pray that a certain pretended deed of conveyance bearing date about September 15th, 1879, executed by the defendants, William R. Dawson, Sarah Dawson, M. C. Dawson, and M. S. Dawson, as grantors, purporting to convey said lands to the said defendants, Lionel C. Burr and Highland H. Wheeler, and now of record in the clerk's office of Lancaster county, Nebraska, and also a certain pretended deed bearing date about the 27th day of April, 1880, executed by the defendant, Melita C. D. Tillman, as a grantor, and purporting to convey said lands to the defendant Giles, and now of record in said clerk's office, and also a certain pretended deed of conveyance executed by the defendants, Albert L. Dawson and A. A. Knicely, as grantors, and purporting to convey said lands to the defendants Burr and Wheeler; and also a certain pretended deed of conveyance executed by the said defendants, Highland H. Wheeler and Lionel C. Burr, and purporting to convey the said lands to the defendant Giles, all now of record in said clerk's office, be, each and all of them, cancelled and annulled, and set aside and held for nought.

3rd. That each and all of the said plaintiffs be adjudged and decreed to have a good, valid, and indefeasible title in fee-simple of the several lots, tracts, pieces, and parcels of land so held and owned by them as aforesaid, free and clear of all claims, liens, demands, interest, title, or incumbrance of the said defendants, or any of them, or of any person claiming through or under them, or any of them, and for such other, further, or different judgment, order, decree, or relief as in equity and good conscience ought to be entered herein.

GALEY & ABBOTT,
16 HARWOOD & AMES,
T. M. MARQUETT,
Plaintiffs' Attorneys.

STATE OF NEBRASKA, *Lancaster County:*

Samuel G. Owen, being duly sworn, says that he is one of the plaintiffs in the foregoing action; that he knows the contents of the foregoing petition, and that the contents thereof are true.

SAMUEL G. OWEN.

Subscribed in my presence and sworn to before me this 27th day of January, A. D. 1882.

S. B. POUND, *Judge.*

On reading the foregoing petition, and being satisfied the plaintiffs are entitled thereto, it is, on motion of plaintiffs' attorneys, ordered that a temporary injunction issue as prayed for in said petition, upon plaintiffs executing to the defendants an undertaking in the sum of four thousand dollars, conditioned as required by law, with sureties, to be approved by the clerk of the district court in and for the county of Lancaster.

January 27, 1882.

S. B. POUND, *Judge.*

(Endorsed:) State of Nebraska, Lancaster county, *ss.* In the district court of the 2nd judicial district of Nebraska. S. W. Little, S. G. Owen, *et al. vs.* Ezekial Giles *et al.* Petition, 3174. 1274. Filed Jan. 27, 1882, at 8.40 p. m. A. D. Burr, cl'k D. C.

17 Whereas, in a certain action now pending in the district court of the second judicial district of the State of Nebraska, in and for Lancaster county, in which Samuel W. Little and D. B. Alexander and others are plaintiffs and Ezekiel Giles and Highland H. Wheeler *et als.* are defendants, a temporary injunction has been granted, on the application of said plaintiffs, restraining the said defendants, and each and all of them, and all persons claiming through or under them, or any of them, during the pendency of this action and until further order of said court, in all respects as prayed for in the prayer to the petition in said action, which prayer is expressly referred to and made a part thereof:

Now, therefore, we, Samuel G. Owen and A. P. S. Stewart, as principals, and John R. Richards and T. P. Quick, as sureties, do hereby undertake, jointly and severally, to the defendants in said action, and each and all of them, in the sum of four thousand dollars, as affixed by the court, that the plaintiffs shall pay to the defendants in said action, and each of them, so enjoined as aforesaid, all and singular the damages they, or either of them, may sustain by reason of such injunction, if it shall be finally decided that said injunction ought not to have been granted.

SAMUEL G. OWEN.
A. P. S. STUART.
JOHN R. RICHARDS.
T. P. QUICK.

STATE OF NEBRASKA, }
Lancaster County, } *ss:*

The above bond and the sureties thereon are approved by me on this 27th day of January, A. D. 1882.

A. D. BURR,
Clerk of District Court.

(Indorsed:) Injunction bond. District court. Samuel W. Little *et al. vs.* Ezekiel Giles *et al.* Marquett, Galey, Harwood & Ames, plaintiffs' attorneys. Filed Jan. 27, 1882. A. D. Burr, cl'k D. C.

18 And thereupon, to wit, on the 27th day of January, 1882, there was issued out of said clerk's office a summons, in the words and figures as follows, to wit:

Summons.

THE STATE OF NEBRASKA, }
Lancaster County, } *ss:*

The State of Nebraska to the sheriff of said county, Greeting:

You are hereby commanded to notify Ezekiel Giles, L. C. Burr, H. H. Wheeler, Albert L. Dawson, William R. Dawson, Sarah H.

Dawson, M. C. Dawson, M. S. Dawson, A. A. Knicely, William A. J. Goodwin, and Melita C. D. Tillman, defendants, that they have been sued by S. W. Little, Samuel Arbuckle, D. B. Alexander, A. J. Sawyer, S. G. Owen, Lorenzo Assmessen, R. H. Oakley, Sarah J. Purcell, A. P. S. Stuart, Thomas R. Clark, Mary A. McElhinney, D. C. Kinsell, Hannah Selwood, Alexander C. Huestis, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestis, Allen W. Hawley, A. F. Lewis, Samuel Arthur, G. F. Thornton, Sarah Cummings, William H. Rundell, Jacob Freedman, O. P. Austin, J. A. Buckstaff, Mary T. McNair, George D. Camp, Wilbur F. Kellogg, Elizabeth N. Chase, Sarah A. Gable, Samuel Aughey, Clarinda A. Bumstead, Elizabeth Paden, Martha E. Snowden, Thomas Woods, Joseph S. Hoagland, Eliza W. Pillsbury, Henry V. Hoagland, W. S. Garrison, C. L. Hooper, S. E. Story, V. E. Farmer, Josephine St. Louis, Frank J. Wassika, Ella N. Miller, John H. Schwabold, Helen Weber, Samuel Henderson, Christine Bohlman, Joseph Richardson, Patrick Lyons, W. Sanford Gee, Allen Cogswill, M. B. Cheeney, Mary E. Maloney, Emma A. Beach, Barret F. Loath, Francis D. Howell, L. S. Howell, Samuel D. Bacon, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Jacob Freedman, Samuel T. English, Guy A. Barnum, H. O. Snow, George Warder, D. D. Muir, George W. Severance, Rody A. Prindell, Mina W. Brown, W. J. Van Dorn, and W. G. Lashus, plaintiffs, in the district court of the second judicial district, in and for the said county of Lancaster, and that unless they answer by the 27th day of February, A. D. 1882, the petition of said plaintiffs filed against them in the clerk's office of said court such petition
19 shall be taken as true and judgment rendered accordingly.
You will make due return of this summons on or before the sixth (6th) day of February, A. D. 1882.

Witness my hand and seal of said court at Lincoln, this 27th day of January, A. D. 1882.

A. D. BURR, *Clerk.* [SEAL.]

(Endorsed:) Summons. District court, No. 3174, doc. K, page 74. Samuel W. Little *et al.*, plaintiffs, *vs.* Ezekiel Giles *et al.*, defendants. "Injunction allowed." Attest: A. D. Burr, clerk. Returnable Feb'y 6, 1882. Galey & Abbott, T. M. Marquett, Harwood & Ames, att'ys for plaintiffs. Which said summons was on the 2d day of February returned and filed in said clerk's office endorsed as follows: Received 9 o'clock p. m., Jan'y 27, 1882. Gran. Ensign, sheriff.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I hereby certify that on the 27th day of Jan'y, 1882, I served the within writ of summons on the within-named L. C. Burr & H. H. Wheeler by delivering to each of them a true and certified copy of the within summons with all the endorsements thereon. Ezekiel Giles, Albert L. Dawson, William R. Dawson, Sarah H. Dawson, M.

C. Dawson, M. S. Dawson, A. A. Kniceley, William A. J. Goodwin, and Mailtia C. D. Tillman not found in my bailiwick.

GRAN. ENSIGN, *Sheriff.*
By S. M. MELICK, *Deputy.*

Fees: Service, 75; copies, $1.00; mileage, 20; total, $1.95.
Filed February 2, 1882.

A. D. BURR,
Clerk D. C.

And on the same day there was issued out of said clerk's office another summons in the words and figures following, to wit:

Alias Summons.

THE STATE OF NEBRASKA, } ss:
Lancaster County. }

The State of Nebraska to the sheriff of Cass county, Greeting:

You are hereby commanded to notify Ezekiel Giles, L. C. Burr H. H. Wheeler, Albert L. Dawson, William R. Dawson, Sarah H. Dawson, M. C. Dawson, M. S Dawson, A. A. Kniceley, William A. Goodin, and Melita C. D. Tillman, defendants, that they have been sued by S. W. Little, Samuel Arbuckle, D. B. Alexander, A. J. Sawyer, S. G. Owen, Lorenzo Assmesson, R. H. Oakley, Sarah J. Purcell, A. P. S. Stuart, Thomas R. Clark, Mary A. McElhinney, D. C. Kinsell, Hannah Selwood, Alexander C. Huestis W. J. Van Dorn, G. W. Lashus, Charles D. E. Huestis, Allen W. Hawley, A. F. Lewis, Samuel Arthur, G. F. Thornton, Sarah Cummins, William H. Rundell, Jacob Freedman, O. P. Austin, J. A. Buckstaff, Mary T. McNair, George D. Camp, Wilbur F. Kellogg, Elizabeth N. Chaise, Sarah A. Gable, Samuel Aughey, Clarainda A. Bumstead, Elizabeth Paden, Martha A. Snowden, Thomas Woods, Joseph S. Hoagland, Eliza W. Pillsbury, Henry V. Hoagland, W. S. Garrison, G. S. Hooper, S. E. Story, V. E. Farmer, Josephine St. Louis, Frank J. Washika, Ella N. Miller, John H. Schwabold, Helen Webber, Samuel Henderson, Christine Bohlman, Joseph Richardson, Patrick Lyons, W. Sanford Gee, Allen Cogswell, M. B. Cheeney, Mary E. Maloney, Emma A. Beach, Barrett F. Loath, Francis D. Howell, L. S. Howell, Samuel D. Bacon, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Jacob Freedman, Samuel T. English, Guy A. Barnum, H. O. Snow, George Warden, D. D. Muir, George W. Severance, Rody A. Prindell, Nina W. Brown, W. J. Van Dorn, and G. W. Lashus, plaintiffs, in the district court of the second judicial district in and for the said county of Lancaster; and that unless they answer by the 27th day of February, A. D. 1882, the petition of said plaintiffs, filed against them in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly. You will make true return of this summons on or before the 6th day of February, A. D. 1882.

Witness my hand and seal of said court, at Lincoln, this 27th day of January, A. D. 1882.

[SEAL.] A. D. BURR, *Clerk.*

(Endorsed:) Summons. District court. No. 3174, doc. K, page 74. Samuel W. Little *et al.*, plaintiffs, *vs.* Ezekiel Giles *et al.*, defendants. "Injunction allowed." Attested: A. D. Burr, cl'k D. 21 C. Returnable Feb'y 6, 1882. Galey & Abbott, T. M. Marquett, Harwood & Ames, att'ys for plaintiffs.

Which said summons was returned and filed in said clerk's office February 6th, A. D. 1882, endorsed as follows:

STATE OF NEBRASKA, } *ss:*
Cass County, }

I rec'd this writ at 4 o'clock p. m. on the 3d day of February, A. D. 1882, and, as commanded hereby, I summoned the within-named Albert L. Dawson, M. S. Dawson, and Melita C. D. Tillman, on the 4th day of February, A. D. 1882, in Cass county, Nebraska, by delivering to each of them in person a true and certified copy of this summons and all the endorsements thereon. Ezkiel Giles, L. B. Burr, H. H. Wheeler, W. R. Dawson, Sarah H. Dawson, A. A. Knicely, and W. A. J. Goodin and M. C. Dawson not found in Cass county, Nebraska.

R. W. HYERS,
Sheriff Cass County, Nebraska.
By M. McELWAIN,
Deputy.

Fees, $1.75; mileage, $2.00; total, $3.75; paid by Owen & Oakley. Filed February 6, 1882.

A. D. BURR,
Cl'k D. C.

And on the 27th day of January, 1882, there was also filed in the clerk's office a certain affidavit, in the words and figures following, to wit:

Affidavit for Publication of Summons.

In the District Court of the Second Judicial District of the State of Nebraska in and for Lancaster County.

SAMUEL W. LITTLE, DAVID B. ALEXANDER, SAMUEL G. OWEN, and Others
against
EZEKIEL GILES, LIONEL C. BURR, HIGHLAND H. WHEELER, *et al.*

THE STATE OF NEBRASKA, } *ss:*
Lancaster County, }

John H. Ames, being by me first duly sworn, says he is one of the duly authorized attorneys of record of the plaintiffs in the above-entitled action named; that this case is one of those mentioned in section number seventy-seven (77) of the code of civil procedure of this State; that the above-named defendant, Ezekiel Giles, is a non-resident of the State of Nebraska and claims the title to or some

liens or interest, actual or contingent, in or to the following-
22 described property situate in this State, to wit: The east half of the northeast quarter of section number thirty-five, in township number ten north, of range number six east, of the sixth principal meridian, in Lancaster county, Nebraska, platted and recorded July 15th, 1870, by Edith J. Dawson as "Dawson's Addition to South Lincoln;" and also the west half of the southeast quarter of section number nineteen, in town. ten north, of range number seven east, of the sixth principal meridian, in said county; and also the southeast quarter of the southeast quarter of said last-mentioned section, and that the relief demanded in the above-entitled action consists in excluding each and all of said defendants, and all persons claiming through or under them, or either of them, from any and all title, claim, lien, or interest in or to said property, or any part thereof, to wit: The said defendants claim the title to said lands, or some lien or interest therein, by virtue of certain pretended conveyances thereof by the heirs of Jacob Dawson, late of said county, deceased, to H. H. Wheeler and L. C. Burr, and by a pretended deed of Highland H. Wheeler [and] Lionel C. Burr, of said property, to said Giles, which said pretended deeds of conveyance are of record in the clerk's office of said Lancaster county and constitute a cloud upon the title of the plaintiffs to portions of said land, constituting substantially all thereof which said plaintiffs hold in severalty by virtue of sales and conveyances thereof and diverse mesne conveyances by Edith J. Dawson, relict and devisee of said Jacob Dawson, and the object of this action is to set aside said pretended conveyances and quiet the title of the plaintiffs in and to said lands. Affiant further says that service of summons cannot be made on said defendants, or any of them, within this State.

JOHN H. AMES.

Subscribed in my presence and sworn to before me on this 27th day of January, 1882.

A. D. BURR,
Cl'k D. C.

23 (Endorsed:) Affidavit for publication. District court. Samuel W. Little *et al. vs.* Ezekiel Giles *et al.* Marquett, Harwood, Ames & Galey, plaintiffs' attorney. Filed Jan. 27, 1882. A. D. Burr, cl'k D. C.

And afterwards, to wit, on the 20th day of February, 1882, there were filed in said clerk's office certain affidavits in words and figures following, to wit:

STATE OF NEBRASKA, } *ss:*
Lancaster County, }

I, V. E. Farmer, in said county, on oath do say: That I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf or in my name, either severally or jointly with others, against

Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or to be prosecuted farther, and I repudiate the action of said att'ys and pl'ffs so far as I am concerned.

V. E. PALMER.

Subscribed in my presence and sworn to before me this 30th day of January, 1882.

[SEAL.] J. H. McMURTRY,
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Frank J. Wassika, in said county, on oath do say: That I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, or in my name, either severally or jointly with others, against Ezekiel Giles, Hiland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my
24 name it was done without my knowledge or consent, and I do not wish it to proceed or to be prosecuted farther, and I repudiate the action of said att'ys and pl'ffs so far as I am concerned.

F. W. WASIKA.

Subscribed in my presence and sworn to before me this 30th day of January, 1882.

[SEAL.] L. MEYER,
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavits of V. E. Farmer and Frank J. Wassika. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF IOWA, } ss:
Woodbury County, }

I, Nina W. Brown, of said county, on oath do say: I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, or John H. Ames, or any one of them, or any person whomsoever, to commence or prosecute for me or in my name, either severally or jointly with others, any action or suit against Ezekiel Giles, Hiland Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such suit or action has been commenced it was done without my knowledge, consent, or authorization, and I do not wish it proceeded with or prosecuted farther, and I hereby repudiate any such suit that has been

commenced so far as I am concerned; and I further say that I am the person denoted and referred to as Mina W. Brown in a certain suit now pending in the district court for Lancaster county, Nebraska, wherein S. W. Little *et al.* are plaintiffs and Ezekiel Giles *et al.* are defendants.

NINA M. BROWN.

Subscribed in my presence and sworn to before me this 8 day of February, 1882, by Nina M. Brown.

[SEAL.] J. P. BLOOD,
Notary Public in and for Woodbury County, Ia.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit of Nina
25 M. Brown. Filed Feb. 2, 1882. A. D. Burr, cl'k D. C.

THE STATE OF IOWA, } ss:
Ringgold County, }

I, Zachary T. Kinsell, of said county, on oath do say that I am the agent of D. C. Kinsell, duly authorized in the premises to make this statement by the said D. C. Kinsell, who now is and for the four months last passed has been a resident of the State of California; that said D. C. Kinsell has never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, or John H. Ames, of Lincoln, Nebraska, or either of them, or any other person whomsoever, to commence or prosecute any suit or action in the district court of the State of Nebraska for Lancaster county, nor in any other court whatsoever, in his name, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. G. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced it was commenced without his knowledge, authorization, or consent, and he repudiates the bringing and repudiation and prosecution of any such action in his name, and the action of the plaintiffs and attorneys in bringing and prosecuting any such action, and he does not desire any such action, if any such there be prosecuted farther, in his name or as far as he is concerned.

Z. T. KINSELL.

Subscribed in my presence and sworn to before me this 18th day of February, A. D. 1882.

E. H. STRINGHAM, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit [of] Z. T. Kinsell. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

I, L. C. Burr, on oath do say that G. W. Lashus, a party named as a plaintiff in an action now pending in the district court of the

second judicial district of Nebraska for Lancaster county,
26 wherein S. W. Little *et al.* are plaintiffs and Ezekiel Giles *et al.* are defendants, never authorized T. M. Marquett, Galey & Abbott, Harwood & Ames, any or either of them, or any person whomsoever to commence or prosecute said action; that said action was commenced and is being prosecuted without his knowledge, authorization, or consent.

L. C. BURR.

Subscribed in my presence and sworn to before me this 20 day of February, A. D. 1882.

GUY A. BROWN, [SEAL.]
Clerk Supreme Court.

(Endorsed:) S. W. Little *et al. vs.* Ezekiel Giles *et al.* Affidavit of L. C. Burr. Filed Feb. 20th, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
County of Lancaster, }

I, Elizabeth Paden, in said county, on oath say that I never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, *vs.* Ezekiel Giles, Highland H. Wheeler, L. C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in any court in said county in my name it has been done without my knowledge or consent, and I do not wish it to proceed or be prosecuted farther, and I repudiate the action of said pretended att'ys or plaintiffs so far as I am concerned.

ELIZABETH PADEN.

Subscribed in my presence and sworn to before me this 13th day of February, A. D. 1882.

L. C. BURR, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit of Elizabeth Paden. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

27 STATE OF CALIFORNIA, } ss:
Los Angeles County, }

I, Allen W. Hawley, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, or John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Hiland H. Wheeler, Lionel C. Burr, William A. G. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowl-

edge or consent, and I do not wish it to proceed or be prosecuted farther, and I repudiate the action of said attorneys so far as I am concerned.

A. W. HAWLEY.

Subscribed in my presence and sworn to before me this 7th day of February, A. D. 1882.

[SEAL.] W. D. STEPHENSON,
Notary Public in and for Los Angeles County.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit of A. W. Hawley. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Francis D. Howell and L. S. Howell, in said county, on *their* several oaths do say that *I* have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, H. S. Harwood, nor John N. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for *me* or in *my* behalf or in *my* name, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in *my* name it was done without *my* knowledge or consent, and do not wish it to proceed any further.

L. S. HOWELL.
FRANCIS D. HOWELL.

28 Subscribed in my presence and sworn to before me this 30th day of January, 1882.

L. C. BURR,
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Samuel T. English, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted further.

SAM'L S. ENGLISH.

Subscribed in my presence and sworn to before me this 31 day of January, 1882.

[SEAL.] L. MEYER,
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavits of Francis D. Howell and L. S. Howell and Sam. S. English. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Chrieten Bohlman, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of the county of Lancaster, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or to be prosecuted farther, and I repudiate the action of said att'ys
29 for said plaintiff so far as I am concerned.

CHRIS. BOHLMAN.

Subscribed in my presence and sworn to before me this 1st day of February, 1882.

L. C. BURR,
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit of Christian Bohlman. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, P. J. Thornton, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted farther, and I repudiate the action of said attorneys for said plaintiffs as far as I am concerned.

P. J. THORNTON.

Subscribed in my presence and sworn to before me this 1st day of February, 1882.

WM. R. KELLY, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit of P. J. Thornton. Filed February 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County. }

I, Ellen Miller, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me in my behalf, either severally or jointly with others, against Ezekial Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted farther, and I repudiate the action of said att'ys so far as I am concerned.

ELLA M. MILLER.

Subscribed in my presence and sworn to before me this 3rd day of February, 1882.

C. C. BURR, [SEAL.]
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County. }

I, Charles D. Bacon, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or to be prosecuted farther, and I repudiate that action of att'ys for pl'ff so far as I am concerned.

CHARLES D. BACON.

Subscribed in my presence and sworn to before me this 2nd day of February, 1882.

L. C. BURR,
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavits Ellen Miller, [and] Chas D. Bacon. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, A. F. Lewis, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, or John H. Ames, or any one of them, or any person whomsoever, to commence or prosecute any action for me or in my behalf,

either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster
31 county, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge and consent.

A. F. LEWIS.

Subscribed in my presence and sworn to before me this 31st day of January, A. D. 1882.

GUY A. BROWN,
Clerk Supreme Court.

(Endorsed:) Little *et al.* —. Affidavit of A. F. Lewis. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Elizabeth M. Chase, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbot, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, or in my name, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I repudiate the action of said atty's & pl'ffs.

ELIZABETH M. CHASE.

Subscribed in my presence and sworn to before me this 30th day of January, 1882.

L. C. BURR, [SEAL.]
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Emma A. Beach, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, or in my name, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I repudiate the
32 action of said att'ys & pl'ffs, and I do not wish it prosecuted any farther.

EMMA A. BEACH.

Subscribed in my presence and sworn to before me this 30th day of January, 1882.

L. C. BURR, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavits of Elizabeth Chase, Emma A. Beach. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, George D. Camp, in said county, on oath do say that I have neither authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, or John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or to be prosecuted farther, and I repudiate the action of said att'ys and pl'ffs as far as I am concerned.

GEO. D. CAMP.

Subscribed in my presence and sworn to before me this 31st day of January, 1882.

A. D. BURR, [SEAL.]
Clk D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Wilber F. Kellogg, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, or John H. Ames, or any one of them, or any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Hiland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster
33 county, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to be proceeded with or to be prosecuted farther. I say I had a conversation with T. M. Marquett, but did not understand I was to be a party pl'ff in action.

W. F. KELLOGG.

Subscribed in my presence and sworn to before me this 31st day of January, A. D. 1882.

WILLIAM B. KELLEY, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavits of Geo. D. Camp, W. F. Kellogg. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Joseph S. Hoagland and Henry V. Hoagland, in said county, on *their* several oaths do say that *I* have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for *me* or in *my* behalf, either severally or jointly with others, against Ezekiel Giles, Hiland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, deceased, or any or either of them, and if any such action has been commenced in *my* name it was done without *my* knowledge or consent, and *I* do not wish it to proceed or to be prosecuted further, and repudiate the action of said att'ys and pl'ffs.

JOSEPH S. HOAGLAND.
HENRY V. HOAGLAND.

Subscribed in my presence and sworn to before me this 31st day of January, 1882.

A. D. BURR,
Cl'k D. C.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavits of Joseph Hoagland, Henry V. Hoagland. Filed Feb. 20, 1882. A. D. Burr, D C.

34 STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Barrett F. Roath, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute for me or in my behalf, or in my name, any action, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, deceased, late of Lancaster county, Nebraska, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not want it to proceed any further.

B. F. ROATH.

Subscribed in my presence and sworn to before me this 30th day of January, 1882.

L. C. BURR, [SEAL.]
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Adam Bax, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any or either of them, nor any person whomsoever, for me or in my behalf, either severally or jointly with others,

to commence or prosecute any action against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, or any or either of them; and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed any further.

ADAM BAX.

Subscribed in my presence and sworn to before me this 30th day of January, 1882.

L. C. BURR, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavits of Barret F. Roath, Adam Bax. Filed February 20, 1882. A. D. Burr, cl'k D. C.

35 STATE OF NEBRASKA, } ss:
County of Lancaster, }

I, Josephine St. Louis, being first duly sworn on *her* oath, say: I never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, either jointly or severally with others, *vs.* Ezekiel Giles, Highland H. Wheeler, L. C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent and I do not wish it to proceed or be prosecuted farther, and so far as I am concerned I repudiate the action of said attorneys and plaintiffs in said action.

JOSEPHINE ST. LOUIS.

Subscribed in my presence and sworn to before me this 8th day of February, A. D. 1882.

WM. R. KELLEY, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit Josephine St. Louis. Filed Feb. 20, 1882. A. D. Burr, — D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, A. J. Sawyer, in said county, on oath, do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has

been commenced in my name it was done without my knowledge or consent and I do not wish it to proceed or to be prosecuted further.

A. J. SAWYER.

Subscribed in my presence and sworn to before me this 31 day of January, 1882.

GUY A. BROWN, [SEAL.]
Clerk Supreme Court.

36 (Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit A. J. Sawyer. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Sarah Cummings, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, or John H. Ames, nor any one of them, nor any person whomesoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or to be prosecuted farther, and I repudiate the action of said att'y and pl'ffs as far as I am concerned.

SARAH CUMMINGS.

Subscribed in my presence and sworn to before me this 6th day of February, 1882.

L. C. BURR, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit of Sarah Cummings. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Geo. W. Severance, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, or John H. Ames, or any of them, or any person whomsoever, to commence or prosecute any action for me or in my name, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent.

GEO. W. SEVERANCE.

37 Subscribed in my presence and sworn to before me this 2d day of February, A. D. 1882.

B. F. COBB,
Justice of the Peace.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavits of George W. Severance. Filed February 22, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
County of Lancaster, }

Patrick Lyons, being first duly sworn on his oath, says: I never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, or John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me in the district court of said county, or in my behalf, either severally or jointly with others, against Ezekiel Giles, H. H. Wheeler, L. C. Burr, Wm. A. J. Goodin, and the heirs of Jacob Dawson, late of said county, deceased, or any or either of them, and if any action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted farther, and I repudiate the action and conduct of said att'ys and pl'ffs, and all of them, and I further say that about the 1st of October, 1881, I sold said lot 9, block 44, set up in said petition, to one Seth Cole by warranty deed, and he now owns said lot, and has not recorded his said deed.

PATRICK LYONS.

Subscribed in my presence and sworn to before me this 14th day of February, 1882.

WM. R. KELLEY, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affida-it [of] Patrick Lyons. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
County of Lancaster, }

Louisa Bax, being first duly sworn, on her oath says: She never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any person whomsoever, to commence or prosecute any action in said county for me or in my behalf,
38 either jointly or severally with others, *vs.* Ezekiel Giles, H. H. Wheeler, L. C. Burr, Wm. A. J. Goodin, and the heirs of Jacob Dawson, late of said county, deceased, or any or either of them, and if any action has been commenced in said county or in any court in my name it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted further, and so far as I am concerned I repudiate the action of said pretended att'ys and pl'ffs.

LOUISA E. BAX.

Subscribed in my presence and sworn to before me this 13 day of February, 1882.

L. C. BURR, [SEAL.]
Notary Public.

(Endorsed:) Little *et al vs.* Giles *et al.* Affidavit of Louisa Bax Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, J. A. Buckstaff, in said county, on oath, say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or on my behalf, or in my name, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted farther, and I repudiate the action of said att'ys and pl'ffs.

J. A. BUCKSTAFF.

Subscribed in my presence and sworn to before me this 30th day of January, 1882.

L. MEYER, [SEAL.]
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Hellen Webber, in said county; on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Har-
39 wood, or John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action in my name for me or on my behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted farther, and I repudiate the action of said att'ys and pl'ff's so far as I am concerned.

HELEN WEBBER.

Subscribed in my presence and sworn to before me this 30th day of February, 1882.

L. C. BURR, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavits of J. A. Buckstaff, Helen Weber. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
County of Lancaster, }

Jesse P. Chipman, being first duly sworn, on his oath says: I never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S.

Harwood, or John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action in the district court of said county for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, H. H. Wheeler, L. C. Burr, Wm. A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of said county, deceased, or any or either of them, and if any such action was commenced in my name it was without my knowledge or consent, and I do not wish it to proceed or be prosecuted further, and I repudiate the action and conduct of said pretended attorneys and plaintiffs and all of them so far as I am concerned.

JESSE P. CHIPMAN.

Subscribed in my presence and sworn to before me this 14 day of February, A. D. 1882.

W. M. LEONARD, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit of Jesse
40 P. Chipman. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, D. D. Muir, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, or in my name, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted farther, and I repudiate the action of said attorneys and pl'ffs.

D. D. MUIR.

Subscribed in my presence and sworn to before me this 30 day of January, 1882.

L. C. BURR, [SEAL.]
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Lorenzo Assmussen, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, or in my name, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of

Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish to proceed or be prosecuted farther, and I repudiate the action of said plaintiffs so far as I am concerned.

LORENZO ASMUSSEN.

Subscribed in my presence and sworn to before me this 30 day of January, 1882.

L. MEYER, [SEAL.]
Notary Public.

41 (Endorsed:) Little *et al. vs.* Giles *et al.* Affidavits of D. D. Muir — Lorenzo Asmussen. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, }
County of Lancaster, } *ss:*

Thomas R. Clark, being first duly sworn, on his oath says: That I never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, or any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, in the district court of said county, against Ezekiel Giles, H. H. Wheeler, L. C. Burr, W. A. J. Goodin, and the heirs of Jacob Dawson, late of said county, deceased, or any or either of them, and if such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted farther, and I repudiate the action of said pretended attorneys and plaintiffs so far as I am concerned.

THOMAS R. CLARK.

Witness to signature:
ADAM BAX.

Subscribed to in my presence and sworn to before me this 10th day of February, A. D. 1882.

_____ _____,
Justice of the Peace

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit of Thomas R. Clark. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, }
Lancaster County, } *ss:*

I, Henry Chilers, of said county, on oath do say that I have never authorized T. M. Marquett, S. H. Galey, N. C. Abbott, N. S. Harwood, or John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, in the district court for said county, or in my name, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, deceased,

or either of them, and if any such action has been commenced
42 it was without my knowledge or consent, and I do not wish it to proceed or be prosecuted farther, and I repudiate the action and conduct of said pretended att'ys and plaintiffs.

his
HENRY x CHILERS.
mark.

Witness to mark of Henry Chilers:
HIGHLAND H. WHEELER.

Subscribed in my presence and sworn to before me this 20th day of February, A. D. 1882.

GUY A. BROWN,
Clerk Supreme Court.

(Endorsed:) Little *et al. vs.* Giles. Affidavit of Henry Chilers. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, W. Sanford Gee, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, or John H. Ames, nor any one of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted farther, and, as far as I am concerned, I repudiate the action of said att'ys for pl'ffs and pl'ffs.

W. SANFORD GEE.

Subscribed in my presence and sworn to before me this 6th day of February, A. D. 1882.

L. C. BURR, [SEAL.]
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, William H. Rundell, in said county, on oath do say that I have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any of them, nor any person whomsoever, to commence or prosecute any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lan-
43 caster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to be proceeded with or prosecuted farther, and I repudiate the action of said pl'ffs and said att'ys.

WILLIAM H. RUNDELL.

Subscribed in my presence and sworn to before me this 31st day of January, A. D. 1882.

L. C. BURR, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit of S. W. Gee, Wm. H. Rundell. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Mary T. McNair, in said county, on oath do say that I have never authorized T. M. Marquet, S. B. Galey, N. C. Abbott, H. S. Harwood, nor John H. Ames, nor any one of them, nor any person whomsoever, to commence any action for me or in my behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted further, and I repudiate the action of pl'ffs' att'ys so far as I am concerned.

her
MARY x T. McNAIR.
mark

Witness:
A. BAX.

Subscribed in my presence and sworn to before me this 1st day of February, 1882.

L. C. BURR, [SEAL.]
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, W. E. Selwood, in said county, on oath do say that I am agent of Hannah Selwood; have never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any one of them, by her or myself, nor any person whomsoever, to commence or prosecute any action for me or in my or her behalf, either severally or jointly with others, against Ezekiel Giles, Highland H. Wheeler, Lionel C. Burr, William A. J. Goodin, and the heirs
44 and representatives of Jacob Dawson, late of Lancaster county, Nebraska, deceased, or any or either of them, and if any such action has been commenced in my name it was done without my or her knowledge or consent, and neither she nor I *do not* wish it to proceed or to be prosecuted further, and I repudiate the action of said att'ys for pl'ffs so far as I am concerned.

W. E. SELWOOD.

Subscribed in my presence and sworn to before me this 1st day of February, 1882.

L. C. BURR, [SEAL.]
Notary Public.

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit of Mary T. McNair, W. E. Selwood. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

STATE OF MICHIGAN, } ss:
County of Kalamazoo, }

I, Allen Cogswell, being duly sworn, on oath do say *he* never authorized T. M. Marquett, S. B. Galey, N. C. Abbott, N. S. Harwood, nor John H. Ames, nor any of them, nor any person whomsoever, to commence or prosecute an action in district court of Lancaster county, Nebraska, for me or in my behalf, and if said or any action has been commenced by them, or any of them, or any one in my name, it was done without my knowledge or consent, and I do not wish it to proceed or be prosecuted farther, and I repudiate the action and conduct of said pretended att'ys and pl'ffs so far as I am concerned.

ALLEN COGSWELL.

Subscribed in my presence and sworn to before me this 16th day of February, A. D. 1882.

FRANK P. MUHLENBERG,
Notary Public.

STATE OF MICHIGAN, *County of Kalamazoo:*

I, Theron F. Giddings, clerk of the county of Kalamazoo and of the circuit court in and for said county, do hereby certify that Frank P. Muhlenberg, whose genuine signature appears to the foregoing affidavit, was, at the time of signing the same, a notary public in and for said county duly commissioned and sworn; that all of his official acts as such are entitled to full faith and credit, and
45 that the said circuit court is a court of record having general jurisdiction.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 16th day of Feb'y, 1882.

THERON F. GIDDINGS, *Clerk.* [SEAL.]

(Endorsed:) Little *et al. vs.* Giles *et al.* Affidavit Allen Cogswell. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C.

And afterwards, to wit, on the 20th day of February, A. D. 1882, there were filed in said clerk's office a certain demurrer, answer, and disclaimer, bond, and petition for removal to United States circuit court, which were in the words and figures following, to wit:

Demurrer.

In the District Court, Lancaster County.

S. W. LITTLE *et al. vs.* EZEKIEL GILES *et al.*

Now comes the defendant Giles and demurs to the petition herein and alleges as grounds therefor:

1. That several causes of action are improperly joined in said petition.

2. That there is a defect of parties plaintiff.

3. That the said petition does not state facts sufficient to constitute a cause of action.

J. M. WOOLWORTH,
Att'y for Def't Giles.

(Endorsed:) S. W. Little *et al. vs.* Ezekiel Giles *et al.* Demurrer. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C. J. M. Woolworth, att'y for defendant.

In District Court Lancaster County.

S. W. LITTLE *et al. vs.* EZEKIEL GILES *et al.*

Now come the defendants, L. C. Burr, H. H. Wheeler, Albert L. Dawson, M. S. Dawson, and Melita C. D. Tillman, and for an-
46 swer to the petition filed herein say: That at and long before the commencement of this action no one of them claimed or pretended to have, and has not now nor claims or pretends to have, any right, title, or interest of, in, or to the lands and premises in said petition mentioned and described, nor any part or parcel thereof, and these defendants, and each and every of them, disclaim all right and title of, in, or to the same or any part thereof.

Wherefore these defendants pray to be hence dismissed with their costs.

J. M. WOOLWORTH,
Att'y for Def'ts.

THE STATE OF NEBRASKA, *Lancaster County,* } *ss:*

Lionel C. Burr, being first duly sworn, on his oath says he is one of the defendants in said above-entitled action; that he has read the above answer, knows the contents thereof, and says the facts therein stated are true.

LIONEL C. BURR.

Subscribed in my presence and sworn to before me this 20th day of February, A. D. 1882.

W. M. LEONARD, [SEAL.]
Notary Public.

(Endorsed:) S. W. Little *et al. vs.* Ezekiel Giles *et al.* Answer. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C. J. M. Woolworth, att'y for def'ts.

Bond.

In the District Court, Lancaster County, State of Nebraska.

S. W. LITTLE *et al.*, Plaintiffs, *vs.* EZEKIEL GILES *et al.*, Defendants.

Know all men by these presents that we, Ezekiel Giles, as principal, and Charles C. Burr and Frank L. Seldon, as sureties, and residents and citizens of the State of Nebraska, are held and firmly

bound unto S. W. Little, D. B. Alexander, Samuel G. Owen, R. H. Oakley, A. P. S. Stuart, Jacob Freedman, Samuel Aughey, C. L. Cooper, John H. Schwabold, Samuel Henderson, Joseph Richardson, Mathew B. Cheeney, Samuel Arbuckle, Sarah J. Purcell, Mary A. McSweeney, Alexander C. Huestis, Charles D. C. Huestis, Charles Hanna,
47 O. P. Austin, Sarah A. Gable, Celinda A. Bumstead, Martha E. Snowden, Thomas Woods, Eliza W. Pillsbury, Charles C. D. Snowden, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; H. O. Snow, Samuel Arthur, Guy C. Barnum, Rhoda A. Prindell, Mary McElhanney, W. J. Van Dorn, W. S. Garrison, S. E. Story, George Warden, and any and all plaintiffs herein, in the penal sum of one thousand dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Dated Lincoln, Nebraska, February 20th, 1882.

Whereas the parties above named, as obligees, have brought an action in the district court of the State of Nebraska for Lancaster county against the said Ezekiel Giles and others, and the said Giles has filed in said court a petition for the removal of said action into the circuit court of the United States for the district of Nebraska:

Now the condition of this obligation is such that if the said Giles shall enter into such circuit court on the first day of its next session a copy of the record in such suit, and pay all costs that may be awarded by said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise, of force.

EZEKIEL GILES.
CARLOS C. BURR.
FRANK L. SHELDON.

Executed in my presence and sureties approved by me this 20th day of February, A. D. 1882.

A. D. BURR,
Cl'k D. C.

(Endorsed:) S. W. Little *et al. vs.* Ezekiel Giles *et al.* Bond. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C. J. M. Woolworth, att'y for defendant.

In the District Court of the Second Judicial District of the State of Nebraska in and for Lancaster County.

S. W. LITTLE *et al. vs.* EZEKIEL GILES *et al.*

To the said court:

48 The petition of Ezekiel Giles, defendant in the above-entitled action, respectfully shows to the court:

1. At the commencement of this action your petitioner was, and for many years prior thereto had been, and still is, a citizen and resident of the State of Iowa; and at the commencement of this action the plaintiffs in this action who are hereafter named were

and for many years prior thereto had been and still are citizens of and residents in States other than the said State of Iowa; that is to say, S. W. Little, D. B. Alexander, Samuel G. Owen, R. H. Oakley, H. O. Snow, W. J. Van Dorn, A. P. Stuart, Samuel Aughey, C. L. Hooper, John H. Schwabold, Matthew B. Cheeney, Samuel Arbuckle, Sarah J. Purcell, Mary A. McSweeney, Charles Hanna, Corlinda A. Bumstead, Mary E. Maloney, Guy C. Barnum, Rhoda A. Prindell, Mary A. McElhainey, Joseph Richardson, W. S. Garrison, S. E. Story, and Henry S. Gordon were and are citizens of the State of Nebraska; Jacob Freeman was and is a citizen of the State of Illinois; Samuel Henderson was and is a citizen of the State of Texas; Thomas Woods, Alexander C. Huestis, and Charles D. C. Huestis were and are citizens of the State of Indiana; O. P. Austin was and is a citizen of the State of Ohio; Sarah A. Gable was and is a citizen of the State of Indiana; Martha E. Snowden and Charles C. Snowden were and are citizens of the State of California; Samuel Arthur was and is a citizen of the State of Pennsylvania; George Warder was and is a citizen of the State of New York; Eliza W. Pillsbury was and is a citizen of the State of Illinois.

2. In this action there are as many different controversies as there are plaintiffs claiming respectively separate and particular parcels of land described in the petition, and each one of said controversies is wholly between each individual plaintiff and this defendant and it can be fully determined as between them, and to the same others impleaded in this action, whether as plaintiffs or defendants, are not necessary parties.

3. The matter of dispute in each of said controversies exceeds, exclusive of costs, five hundred dollars.

49 4. This action was commenced on the 27th day of January, 1882, and has not been and is not yet at issue, and could not have been tried before the present term of this court.

5. Your petitioner now here presents to this court a bond, which has been duly made, with good and sufficient sureties, conditioned that he will enter into the circuit court of the United States, on the first day of its next session, a copy of the record in the said suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that such suit was wrongfully or improperly removed thereto.

Your petitioner therefore prays that this his petition be accepted by this court and the above-mentioned suit be removed out of this court into the circuit court of the United States for the district of Nebraska, and that the said bond be accepted, and this court proceed no further in said suit; and for all such other and further relief as is necessary and proper.

J. M. WOOLWORTH,
Att'y for Def't.

STATE OF NEBRASKA, }
County of Lancaster, } *ss:*

I, L. C. Burr, being duly sworn, say that I am the attorney of the defendant herein, Ezekiel Giles; that I have read this petition for

removal of said cause, and know the contents thereof, and the facts therein stated are true, as affiant verily believes; and affiant says that said Giles is a non-resident of said State of Nebraska, and is now absent therefrom.

L. C. BURR.

Subscribed to in my presence and sworn to before me this 20th day of February, A. D. 1882.

W. M. LEONARD. [SEAL.]
Notary Public.

(Endorsed:) S. W. Little *et al. vs.* Ezekiel Giles *et al.* Petition to remove cause to U. S. circuit court for district of Nebraska. Filed Feb. 20, 1882. A. D. Burr, cl'k D. C. J. M. Woolworth, att'y for def'ts.

Be it remembered that on the 1st day of March, A. D. 1882, the following proceedings were had and done in a cause lately
50 pending in said circuit court, wherein Ezekiel Giles *et al.* were defendants and S. W. Little *et al.* were plaintiffs:

S. W. LITTLE *et al. vs.* EZEKIEL GILES.

The defendant Giles in the above-entitled action having filed his petition for removal thereof into the United States circuit court for the district of Nebraska, and presented his bond in that behalf, it is ordered that the said petition and bond be, and the same are, and each of them is hereby, accepted and approved, and that this cause be removed out of this court into the said circuit court.

THE STATE OF NEBRASKA, } *ss:*
Lancas'er County, }

I, A. D. Burr, clerk of the district court of the State of Nebraska in and for Lancaster county, Nebraska, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record, files, process, and proceedings and the whole thereof in an action lately pending in said court, wherein S. W. Little *et al.* were plaintiffs and Ezekiel Giles *et al.* were defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 20th day—4 o'cl'k p. m.—of February, A. D. 1882.

[SEAL.] A. D. BURR,
Clerk, D. C.

Transcript fees, $20.50.

Upon the back of the transcript appear endorsements in words and figures following, to wit:

No. 202 F. Circuit court U. S., district of Nebraska. S. W. Little *et al. vs.* Ezekiel Giles *et al.* Transcript. Filed Feb. 28, 1882. Elmer D. Frank, clerk.

51 Thereupon, afterwards, at the January term of said court, on the 28th day of February, 1882, the following proceedings were

had in said case, as appears of record on folio 635, journal "G" of said court:

S. W. LITTLE *et al.*, Plaintiffs,
vs.
EZEKIEL GILES *et al.*, Defendants. } 202 F.

The defendant Giles in above-entitled suit having filed in this court the transcript of the record of the proceedings had therein in the district court of the State of Nebraska for the county of Lancaster, on motion of J. M. Woolworth, of counsel for said Giles, it is ordered that on or before the first day of adjourned January session, 1882, plaintiffs show cause, if any they have, why this court shall not entertain the said suit, and proceed with same as if it had been originally brought therein.

Thereupon, afterwards, to wit, on the first day of March, 1882, motion to remand was filed in said case, which said motion to remand is in words and figures following, to wit:

Motion.

In the Circuit Court of the United States in and for the District of Nebraska.

SAMUEL W. LITTLE *et al. vs.* EZEKIEL GILES *et al.*

Now come the plaintiffs in the above-entitled cause, and, for the purpose of making this motion and none other, move the court to remand this case to the district court of Lancaster county for the following reasons:

First. It appears by the pleadings filed in this case that
52 Ezekiel Giles, the party who brings this case to this court, is not the real party in interest, but that L. C. Burr and H. H. Wheeler and the heirs of Jacob Dawson, deceased, are the real parties in interest in this case, and this action is brought to this court for their benefit.

Second. It appears that all the parties to this suit who are real parties in interest are residents of the State of Nebraska, except Ezekiel Giles, who is only a nominal and colorable defendant herein.

Third. It appears from the files in this cause that no sufficient petition or bond was filed in this cause for the removal of his cause from the district court of the State of Nebraska to this court, and that the pretended petition and bond which was filed was not accepted by the court, as by the act of Congress in such cases made and provided.

T. M. MARQUETT,
GALEY & ABBOTT,
HARWOOD & AMES,
Att'ys for Pl'ff.

Upon the back of said motion appear endorsements in words and figures following, to wit:

[Endorsed:] No. 202 G. In the circuit court of the United States

for the district of Nebraska. S. W. Little *et al. vs.* Ezekiel Giles *et al.* Motion to remand. Filed March 1, 1882. Elmer D. Frank, clerk, by F. E. McCrary, deputy cl'k.

Thereupon, afterwards, at the January term of said court, on the 5th day of April, 1882, the following proceedings were had in said case, as appears of record on folio 651, journal G of said court.

S. W. LITTLE *et al. vs.* EZEKIEL GILES *et al.*

On motion of J. M. Woolworth, of counsel for the defendant Giles, it is ordered that he have leave to withdraw his demurrer
53 to the bill herein, and file a general answer thereto, and also to file a cross-bill; and T. M. Marquett appearing in court for said plaintiffs, and consenting thereto, it is ordered that the plaintiffs reply to said answer within thirty days, and that the defendants in said cross-bill answer thereto within thirty days.

Thereupon afterwards, to wit, on the 5th day of April, 1882, the answer of Ezekiel Giles was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

The answer of Ezekiel Giles, one of the defendants to the bill of complaint of S. W. Little, Samuel Arbuckle, D. B. Alexander, A. J. Sawyer, S. G. Owen, Lorenzo Assnesson, R. H. Oakley, Sarah J. Purcell, A. P. S. Stewart, Thomas R. Clark, Mary A. McElhinney, D. C. Kinsell, Hanna Selwood, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashuss, Charles D. C. Huestes, Allen W. Hawley, A. F. Lewis, Samuel Arthur, G. F. Thornton, Sarah Cummings, William H. Rundell, Jacob Freeman, O. B. Austin, J. A. Buckstaff, Mary T. McNair, George D. Camp, Wilbur F. Kellogg, Elizabeth N. Chase, Sarah A. Gable, Samuel Aughey, Clarinda A. Bumstead, Elizabeth Paden, Martha E. Snowden, Thomas Woods, Joseph S. Hoagland, W. S. Garrison, C. L. Hooper, S. E. Story, V. E. Farmer, Joseph St. Louis, Eliza W. Pillsbury, Henry V. Hoagland, Frank J. Wassika, Ellen N. Miller, John H. Schwabold, Helen Weber, Samuel Henderson, Christian Bohlman, Joseph Richardson, Patrick Lyons, W. Sanford Gee, Allen Cogswell, M. B. Cheeney, Mary E. Maloney, Emma A. Beach, Barrett F. Loath, Francis D. Howell, K. S. Howell, Samuel D. Bacon; Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Jacob Freeman, Samuel T. English, Guy A. Brown, H. O. Snow, George Warder, D. D. Muir, George W. Severance, Rody A. Prindle, Mina W. Brown, W. I. Van Dorn, and G. W. Lashers, plaintiffs.

54 This defendant, now and at all times hereafter saving and reserving to himself all and all manner of exceptions which may be had or taken to the said bill of complaint, for answer thereto says:

I. He denies that the dwelling mentioned in said bill, the erection of which was commenced by said Jacob Dawson shortly before his death, was in no fit or proper condition for a residence, and was a

dark, gloomy, or unwholesome place to occupy for a residence, or that it was of no value, or that the said Jacob left no personal property of any value except that mentioned in said bill, or that all the real estate whereof he died seized was, when he made his said will, worth only $10,000, or that at his death he was largely indebted or indebted in the sum of $5,000, or was insolvent or unable to pay his debts, or that the said Edith J. was compelled or did sell any of the real estate bequeathed and devised to her by said will in order to raise money to build a suitable dwelling for herself and her family, or to pay his debts, or that the premises or any part thereof in said bill described and alleged to have been sold for that purpose were in fact sold by her for that purpose, or that she sold any of the lands in said bill described for the purpose to raise the money to pay the debts of the said Jacob or of advancing her son Hampton, or that all or any of these persons who claim title to any of the lots in said Dawson's addition to South Lincoln by deeds from said Edith J. by her in said bill alleged are so poor as to be unable to employ counsel to defend their said claims in separate and distinct suits, or that all or any of the defendants in this suit, save the defendant Giles, have or claim any interest in the lands or any — thereof in said bill mentioned, described, or referred to; and this defendant further denies each and every allegation in said bill contained charging any conspiracy or combination upon the defendants herein or any purpose or intention to cloud or incumber the titles
55 of said plaintiffs or any or either of them, or to disturb or harass them in the possession of the same, by various or vexatious or any suits or proceedings, save as it may be necessary to assert and recover the rights hereinafter stated of this defendant, and this defendant denies that the deed mentioned in said bill was made for the purpose of enabling such suits, actions, or proceedings to be prosecuted in the circuit or the district courts of the United States, or that this defendant is a man of no property or pecuniary means, or that the said deed was never in fact delivered to him or accepted by him, or that any of the defendants herein have threatened to cause this defendant, or has this defendant threatened that he will execute and deliver or cause to be recorded deeds of conveyance of any of the said premises to any persons or corporations, and this defendant denies that the said premises, any or all thereof, were sold and conveyed by the said Edith J. upon the representations or statement of said Burr, or that he ever stated or represented to the grantees of the said Edith J., or any or either of them, that said will conveyed, devised, or bequeathed to her a fee-simple in or to said property, or that under said will she had any right, power, or authority to sell or convey any estate in fee.

II. This defendant, further answering, says that on the 15th day of June, 1869, Jacob Dawson made his last will and testament, a copy of which is hereto annexed, marked "A" and made a part of this answer; that said Jacob died in Lancaster county, in this State, on the 22d day of June, 1869; that said will was duly proved in and admitted to probate by the probate court of said county; that letters testamentary were issued out of said court to the said Edith J., who

duly qualified as executrix thereof, and filed an inventory of the estates and property whereof the said Jacob died seized and possessed, and the personality was duly appraised at the sum of $958.00, but she did no other act in her capacity as executrix or in the execution of her said trust; that at his death the said Jacob was seized of the lands and premises in said bill
56 described, and left him surviving Edith J., his wife, and John Hampton Dawson, Albert L. Dawson, William R. Dawson, Melita C. Dawson, Minnie S. Dawson, and Evaline Dawson, his sons and daughters; that afterwards the said John Hampton died intestate, leaving his said brothers and sisters him surviving, his heirs-at-law, and the said Evaline was intermarried with A. A. Kniceley, and on the 15th of November, 1879, the said Edith J. intermarried with one Pickering. And this defendant now here insists that under and by virtue of the said last will and testament of the said Jacob Dawson the said Edith J., his widow, took an estate for life in the lands and premises mentioned in said bill and no other or greater estate, and that the plaintiffs herein, by and under the several deeds of said premises and of parts and parcels thereof, took a like estate for life in the several parcels of land by them respectively in their said bill claimed and no other or greater estate, and that at the marriage of the said Edith J. with the said Pickering the said estates determined, and under and by virtue of the said will the said William R., Albert L., Melita C., Minnie S., and Evaline became and were seized in fee of the premises in said bill mentioned and described, all and every thereof, and against the claims of the said plaintiffs, each and every of them, this defendant ought to be quieted in the enjoyment of his said estate and the possession thereof.

III. On or about the 23 day of August, 1880, in this honorable court for the district of Nebraska, this defendant commenced his certain civil action against the said plaintiff, S. W. Little, and one May, who was his tenant, and therein alleged the death of the said Jacob, the said will and the probate thereof, as hereinbefore stated, and the marriage of the said Edith J., and the conveyances from the said William R., Albert L., and Minnie S. Dawson, and the said Evaline Kniceley, and that by divers mesne conveyances this defendant had become and was seized
57 and entitled to the immediate possession of that certain piece or parcel of land described in petition—that is to say, lot number six, in block fifty-four, in the city of Lincoln, Lancaster county, Nebraska, according to the original plat and survey of the town, now city, of Lincoln, except six inches off the entire east line of said lot which supports the east party wall of said lot, and also alleged that the said Little claimed to be seized of the title to said lot of land by divers mesne conveyances from the said Edith J., and prayed a judgment for the possession of said premises, and for other relief. Thereupon the said Little and May duly appeared in this court to said action, and demurred to said petition, on the ground that the same did not state facts sufficient to constitute a cause of action. Such proceedings were had in said action that the questions

were raised, made, and presented to said court for its consideration and judgment whether the said Edith J. became and was, by virtue of the said will, seized of an estate in fee-simple in the said lot of land, or whether she thereby became and was seized of a life estate determinable on her marriage, and also whether she was by the force and effect of said will vested with a power to convey an estate in fee-simple in the said lot or only an estate for life determinable upon her marriage; that the said circuit court, being of opinion she took an estate in fee, with full power to convey such estate, on the 21st day of February, 1881, rendered judgment against this defendant, and in favor of said Little and May, that the said petition be dismissed out of that court, and that said Little and May recover against this defendant their costs, taxed at $41.45. Thereupon this defendant, by due process in that behalf, removed said action and judgment into the Supreme Court of the United States; that the respective parties thereto duly appeared in said Court and argued the said action, and such proceedings were had therein that on the 12th day of December, 1881, the said Supreme Court rendered its judgment therein, whereby it reversed the said judgment of this court and
58 adjudged that this defendant recover against the said Little and May $49.73 for his costs therein expended, and have execution therefor; and it was also by the said Supreme Court remanded to said circuit court for further proceedings to be had therein in conformity with the opinion of said Supreme Court, a copy of which is hereto attached. On the 6th day of February, 1882, a mandate in due form and according to the course and practice of said Supreme Court was issued out of the same, directed to the judges of this court, commanding them that such execution and further proceedings be had in this cause, in conformity with the opinion and judgment of said Supreme Court, as according to right and justice and the laws of the United States ought to be had, which mandate was, on the 13th day of February, 1882, duly presented to and filed in said circuit court; whereupon this court made and entered its order and judgment that its former and aforesaid judgment be, and the same was thereby, vacated, annulled, and held for naught, and leave was given the said Little and May to answer the said petition of this defendant, which they have done by plea in abatement, to which this defendant prays reference if necessary, which action remains pending in said court undetermined.

IV. On the 27th day of January, 1882, this defendant commenced in this court his certain other civil action against Martha Alexander for the recovery of that certain lot of land—being one of those described in the said bill herein—that is to say, a part of lots numbered four and five, in block fifty-four, in the original plat of the said city of Lincoln, fronting twenty-one and eighty-eight one-hundredths feet on "O" street in said city and extending the same width south one hundred and forty-two feet to the alley, and portioned from said lots four and five as follows: Fifteen and sixty-three one-hundredths feet in width off the west part of said lot four and six and twenty-five hundredths feet in width off the east part of said lot five.

And in his petition filed in said action he alleged the death
59 of said Jacob, the said will and the probate thereof, as hereinbefore stated, and the marriage of the said Edith J., and the conveyances from the said William R., Albert L., Melita C., and Minnie S. Dawson, and the said Evaline Knicely; and that by divers mesne conveyances this defendant has become and was seized and entitled to the immediate possession of the last above-mentioned piece or parcel of land, and also alleged that the said Alexander claimed to be seized of the title to said lot of land by divers mesne conveyances from the said Edith J., and prayed judgment for the possession of said premises and for other relief. The summons was duly issued out of said court under the seal and according to the course and practice thereof, directed to the marshal of the United States for the district of Nebraska, commanding him to notify said Alexander that she had been sued by the defendant in said circuit court, and that she must appear therein by a day therein limited and answer said petition or her default would be entered against her and judgment entered accordingly, which summons was thereupon delivered to said marshal to be executed, and he duly served the same on said Alexander on said day. All which proceedings were had and done before the commencement of this action.

V. On the 27th day of January, 1882, this defendant commenced in said circuit court his certain other civil action against A. P. S. Stuart for the recovery of that certain lot of land, being one of those described in the said bill herein—that is to say, the west one-half of lots numbers three and nine and thirty-seven one hundredths feet off from the east side of lot number four, all in block number fifty-four, in the town, now city, of Lincoln, Nebraska, according to the original plat and survey of said town, now city, and in his petition filed in said action alleged the death of the said Jacob, the said will and the probate thereof, as hereinbefore stated, and the marriage of the said Edith J., and the conveyances from the said William
60 R., Albert L., Melita C., and Minnie S. Dawson and the said Evaline Knicely, and that by divers mesne conveyances this defendant has become and was seized and entitled to the immediate possession of the last above-mentioned lot of land, and also alleged that the said Stuart claimed to be seized of the title to said lot of land by divers mesne conveyances from the said Edith J., and prayed judgment for the possession of said premises and for other relief; that summons was duly issued out of said court according to the course and practice thereof, directed to the marshal of the United States for the district of Nebraska, commanding him to notify said Stuart that he had been sued by the defendant in said circuit court, and that he must appear therein by a day therein limited and answer said petition, or his default would be entered against him and judgment entered accordingly, which summons was thereupon delivered to said marshal to be executed, and he duly served the same on said Stuart on said day, all of which proceedings were had and done before the commencement of this action.

6. On the 27th day of January, 1882, this defendant commenced

in said circuit court his certain other civil action against Samuel G Owen and R. H. Oakley for the recovery of that certain lot of land, being one of those described in said bill herein—that is to say: Nineteen feet and five and one-half inches off of lots five and six, in block number fifty-four, in the city of Lincoln, Nebraska, according [to] the recorded plat of said city, described more fully as eighteen feet and nine and one-half inches off of the east side of lot number six, in said block, commencing at the center of the west wall of the building occupied by Mrs. Alexander and running due west nineteen feet and five and one-half inches to or near the center of the wall of the building now occupied by S. W. Little next west, and, in his petition filed in said action alleged the death of the said Jacob, the said will and the probate thereof, as hereinbefore
61 stated, and the marriage of the said Edith J., and the conveyances from the said William R., Albert L., Melita C., and Minnie S. Dawson, and the said Evaline Kniceley, and that by diverse mesne conveyances this defendant has become and was seized and entitled to the immediate possession of the last above-described lot of land, and also alleged that the said Owen and Oakley claimed to be seized of the title to said lot of land by divers mesne conveyances from the said Edith J., and prayed judgment for the possession of the said premises and for other relief. That summons was duly issued out of said court according to the course and practice thereof directed to the marshal of the United States for the district of Nebraska, commanding him to notify said Owen and Oakley that they had been sued by the defendant in said circuit court, and that they must appear therein by a day therein limited and answer the petition, or their default would be entered against them and judgment entered accordingly, which summons was thereupon delivered to said marshal to be executed, and he duly served the same on the said Owen and the said Oakley on the said days; all which proceedings were had and done before the commencement of this suit.

VII. This defendant commenced and prosecuted all and every the said several actions in this honorable court in a due and ordinary course of litigation for the purpose of the establishment of his rights and the recovery of his said property, with no desire, purpose, and intention of annoying, vexing, or subjecting to expense the said Little, Alexander, Stuart, or Owen and Oakley, or any of said plaintiffs, or either or any of them, beyond or otherwise than was necessary and proper to vindicate his rights as they have been defined, declared, and adjudged by the Supreme Court of the United States.

VIII. Certain of the plaintiffs herein—that is to say, Little, Alexander, Owen, Oakley, and Stuart, and their attorneys, Galey & Abbott, Harwood & Ames, and T. M. Marquett—shortly after
62 they were informed of the aforesaid judgment of the Supreme Court of the United States, entered into a conspiracy to bring this action into the district court of the State of Nebraska, and for that purpose obtained from the records of deeds of the said Lancaster county the names of all, or nearly all, the persons who appeared thereon to have deeds for parts of the lands described in the bill herein by which interests purported to be derived to them from

the said Edith J., as in the said bill is alleged, and with no authority from them impleaded them as parties plaintiffs in this action. Of the parties plaintiff named in this action the following not only never authorized but did not know of such use of their names and have repudiated the said action—that is to say: Allen W. Hawley, Elizabeth Paden, Joseph S. Hoagland, Henry V. Hoagland, A. F. Lewis, Nina M. Brown (called Mina W. Brown), Barret F. Roath, Adam Bax, Louisa Bax, Elizabeth Chase, George D. Camp, Wilber F. Kellogg, Emma A. Beach, Thomas R. Clark, D. D. Muir, Lorenzo Assmussen, Christian Bohlman, Ellen W. Miller, Charles D. Bacon (called Samuel D. Bacon), J. P. Thornton (called G. F. Thronton), J. A. Buckstaff, Helen Weber, Francis D. Howell, Lavender S. Howell, Samuel S. English, Josephine St. Louis, W. Sanford Gee, William H. Rundell, Sarah Cummings, Mary T. McNair, Hanna Selwood, V. E. Farmer, Frank J. Wassika, A. J. Sawyer, George W. Severance, Henry Chilers, D. C. Kinsell, Jesse P. Chapman, and Patrick Lyons. And of the parties plaintiff named in this action the following not only never authorized but did not know of such use of their names, and this defendant believes they will repudiate this action—that is to say: Jacob Freeman, Samuel Aughey, C. L. Hooper, John H. Schwabold, Samuel Henderson, Mathew B. Cheeney, Samuel Arbuckle, Sarah J. Purcell, Mary A. McSweeney, Alexander C. Huestis, Charles D. C. Huestis, Charles Hanna, C. P. Austin, Sarah A. Gable, Clarinda A. Bumstead, Martha E. Snowden, Thomas Woods, Charles C. Snowden, Allen Cogswell, Mary E. Maloney,
63 Guy C. Barnum, Rhoda A. Prindell, H. O. Snow, G. H. Lashus, George Warder, Samuel Arthur, W. J. Van Dorn, Mary A. McElhanney, Joseph Richardson, Eliza Pillsbury, W. S. Garrison, S. E. Story, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased.

The object of said Little, Alexander, Owen, Oakley, and Stuart in entering into this conspiracy, and in pursuance thereof bringing this action and impleading the above-named parties as plaintiffs therein, was to avoid the said judgment of the United States Supreme Court by transferring the controversy from the Federal courts to the courts of this State, which had never determined the effect and the construction of the said will, and also to subject this defendant to several controversies in the two distinct jurisdictions of the Federal and State courts, and there impose upon him great expense and vexation and to compel him to compromise said disputes and release his title to said property, notwithstanding his constitutional rights as a citizen of a State other than Nebraska to prosecute his claims in the Federal courts.

IX. At the time of the death of the said Jacob the said Edith J. was seized in her own right of divers real and personal estates, which were of very great value, and among others of that certain parcel of land known as the east half of the southwest quarter of section twenty-five, township ten north, of range 6, in Lancaster county, which was of the full and fair value of $10,000. She was not greatly experienced in business, and had occasion for the advice and assistance of an experienced, judicious, and faithful counsellor in the

management of her estates as well as those whereof she at the death of the said Jacob was seized in her own right as of those devised by him aforesaid, for which reason she retained and employed as her adviser Smith B. Galey, one of the attorneys in this action, and she imposed in him implicit confidence and entrusted him with the entire and exclusive care and administration of her said in-
64 terests, and made to him her power of attorney in writing to do and transact for her and in her name all her business and sell and convey any and all her estates. The said Galey acting under his said power from said Edith J. laid out and platted the said east half of the southeast quarter of section twenty-five into lots, blocks, and streets, as an addition to the city of Lincoln, which was known as Capital addition; he also, by the same authority, laid out and platted as a town another piece of land described in said bill as the east half of the northeast quarter of section thirty-five, in township ten north, of range six east, and called the same Dawson's addition to South Lincoln; and he proceeded under the like authority to sell the lots in the said additions, realizing from the sale of the lots in the said Capital addition not less than $20,000, and from all the sales of her said property realized not less than $75,000; and if any of the persons or parties who purchased from the said Edith J. any of the said parcels of devised land did so believing they were acquiring an estate in fee therein, the said Galey advised them that such was the fact.

X. In the execution of his said trust the said Galey fraudulently appropriated a large part of said proceeds of said sales to his own use without the knowledge or consent of the said Edith J. and without accounting to her therefor, and he otherwise so dishonestly, unfaithfully, and injudiciously administered his said trust that the whole of the said estates and the proceeds thereof were squandered and she and her children are now in extremely destitute circumstances. In pursuance of such his dishonest practices, the said Galey compelled the said Edith J. to make her promissory note for $5,500, with interest at the rate of 12 per cent. per annum, payable in advance, and also her certain indenture of mortgage upon the tract of land in said bill claimed by said plaintiffs Hawley, Arthur, and Snow, and delivered the same to the Union Mutual Life
65 Insurance Company of Maine, and a part of the contract of loan made by him with said company upon said securities was that out of the proceeds thereof should be paid to said company the premium upon an insurance upon his own life for $25,000, payable to his mother-in-law, Mrs. Warner; and afterwards, as premiums upon said policy became due, he paid them from the funds of the said Edith J., nor had she ever knowledge of the fact of the said policy or the said payments thereon, nor were any part of the proceeds of said loan ever paid to her. By reason of the mismanagement of her affairs by said Gailey she was unable to pay said note, and being ignorant of her rights she made to one Freeman Nickerson, as trustee for said company, a deed of said mortgaged premises and all thereof. And the said Hawley, Warden, Arthur, and Snow purchased the west half of the southeast quarter of section

nineteen, township ten north, of range seven east, from the said Nickerson. The said Nickerson, the said insurance company, Hawley, Warden, Arthur, and Snow, at the several times at which they respectively acquired their pretended interest in said lands, had full actual knowledge and advice not only of the said will and the true construction and effect thereof, but also of the several facts in this present paragraph set forth, and all thereof.

XI. The said plaintiff, Stuart, purchased the premises in said bill claimed by him on or about the 15th of November, 1881, with full knowledge not only of the said will and the terms thereof, but also of the pendency of this defendant's action aforesaid against said Little, the questions involved therein, and his grantors refusing to warrant his title. The said Stuart purchased the premises for two-thirds their value, and took a quit-claim deed therefor. And the said plaintiffs, Owen and Oakley, purchased the premises in said bill claimed by them, on or about the — day of ——, with full knowledge not only of the terms of said will, but also the pendency of this defendant's action last above mentioned and the questions therein involved, and from their grantors they took only his quit-
66 claim deed, because, for the consideration paid him therefor, he was unwilling to warrant the title to said premises.

XII. The defendant denies that he or any of his codefendants herein ever threatened to bring any action of ejectment or otherwise disturb the possession of all or any or either of the parties plaintiff herein who have improved and now occupy any part of the premises laid out as a town, and called Dawson's addition to South Lincoln.

XIII. This defendant, answering, denies, upon information and belief, that the defendants, or any of them, have expended $25,000, or any considerable portion thereof, in improving the lands in said bill claimed by the plaintiffs Little, Owen, Oakley, Alexander, or Stuart. He admits that the said plaintiffs respectively claim the several parcels of land whereof the said Jacob Dawson died seized, as in the said bill in that behalf is alleged, and that their claim is based upon deeds of conveyances which were made by the said Edith J. to them respectively, or their several grantors, and that considerable improvements have been made upon said lots and parcels of land, but what the value or costs of said improvements may be this defendant does not know, and has not been informed save by said bill, and cannot state save that they did not cost and are not of the value by said plaintiffs in their said bill alleged; but this defendant denies that said plaintiffs, any or either of them, is seized in fee, or has, or since the marriage of said Edith J. with said Pickering has had, any estate whatever in said lots, parcels, and lands, or any [part] thereof.

XIV. And this defendant, denying that the purpose thereof was as in said bill is alleged, admits that the said Dawsons conveyed all the several lots and parcels of land in said bill mentioned and described to the defendants Burr and Wheeler, and say that the deeds *were* made by them in that behalf were deeds with covenants for title, and this defendant says that the only con-

sideration for said deeds was the sum of two hundred dollars
67 and the agreement of the said Burr and Wheeler to pay to said Dawsons one-third of the value of the proceeds which they might recover from the plaintiffs, or any of them, in suits, actions, or proceedings which they, the said Burr and Wheeler, might or should bring and prosecute in that behalf; but this defendant says that the said deeds so by the said Dawsons made to the said Burr and Wheeler, and the agreement and promise so as aforesaid made by said Burr and Wheeler to said Dawsons, left no right, title, interest, or estate in the said lots or parcels of land or any thereof remaining in said Dawsons, or any or either of them, and as between this defendant and said plaintiffs the validity of the said conveyances is not a subject of proper inquiry, but thereunto the said plaintiffs are strangers. And this defendant further admits and says that on or about the 27th of April, 1880, the said Burr and Wheeler executed a deed or deeds in due form of law, whereby they conveyed all of said lands to this defendant without covenants of warranty or for title or otherwise; but this defendant now here denies that the said deed or deeds were so as aforesaid made to him by the said Burr and Wheeler for the purpsse of enabling suits, actions, or proceedings to be brought or prosecuted in the United States district or circuit courts for this district. And this defendant further admits that all of said deeds were duly made, executed, and acknowledged so as to entitle them to be recorded, and the same were, on the 11th day of January, 1882, recorded in the clerk's office of Lancaster county, and now remain of record therein, and he here insists that thereby he became and was and is seized in fee of all and singular the said lots, pieces, and parcels of land in the said bill mentioned and described. And he further admits that for more than a year before the commencement of this suit he had and does now represent and allege to said plaintiffs,
and publicly and generally to all persons, that by the terms of
68 said will, and in accordance with the terms of said will, and in accordance with the intent of said testator, said will conveyed to said Edith J. a like estate in said real property, subject to be determined by her marriage; and that she had no right, power, or authority under said will or the intent of said testator to sell or to convey to any person the fee-simple title in or to the said lands or any part or parcel thereof; and that on the 15th of November, 1879, she intermarried with one Pickering, and thereby all interest, right, title, estate, and right of possession of whatever nature of the said plaintiffs, all and every of them, in or to the said several lots, tracts, pieces, or parcels of land and any of them in said bill mentioned and described did on said day wholly and utterly cease and determine. And this defendant now here reaffirms said facts.

And this defendant denies all combination and confederacy wherewith he is in and by the said bill charged, without that any other matter or thing material or necessary for this defendant to make answer unto and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

All of which matters and things this defendant is ready to aver,

maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

J. M. WOOLWORTH,
Of Counsel for Def't.
L. C. BURR, *Sol. for Def't.*

STATE OF NEBRASKA, *ss:*

L. C. Burr, being duly sworn, said: I am one of the solicitors for the defendant in the above answer; he is a non-resident of this district and absent therefrom. I have read the above answer and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on information
69 and belief, and as to those matters I believe it to be true.

L. C. BURR.

Subscribed in my presence and sworn to before me this 5th day of April, A. D. 1882.

F. E. McCRARY, *D. C.*

"A."

In the name of God, Amen. I, Jacob Dawson, of the town of Lincoln, in the county of Lancaster and State of Nebraska, being of sound mind and memory, and considering the uncertainty of this frail and transitory life, do therefore make, ordain, publish, and declare this to be my last will and testament—that is to say:

After all my lawful debts are paid and discharged the residue of my estate, real and personal, I give, bequeath, and dispose as follows, to wit:

To my beloved wife, Edith J. Dawson, I give and bequeath all my estate, real and personal, of which I may die seized, the same to be and remain hers, with full power, right, and authority to dispose of the same as to her shall seem meet and proper, so long as she shall remain my widow, upon the express condition, however, that if she should marry again then it is my will that all of the estate herein bequeathed, or whatever may remain, should go to my surviving children, share and share alike, and in case any of my children should have deceased leaving issue, then the issue so left to receive the share to which said child would be entitled. I likewise make, constitute, and appoint my said wife, Edith J., to be executrix of this my last will and testament, hereby revoking all former wills made by me.

In testimony whereof I have hereunto subscribed my name on this tenth day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

JACOB DAWSON.

70 The above-written instrument was subscribed by the said Jacob Dawson in our presence, and acknowledged by him to each of us, and he at the same time published and declared the above-written instrument so subscribed by him to be his last will

and testament; and we, at the testator's request, and in his presence and in the presence of each other, have hereunto signed our names as witnesses, and have written opposite our respective names our respective places of residence. Done on this tenth day of May, 1869.

HENRY S. JENNINGS,
Lincoln, Neb.
J. A. HELMAN,
Lincoln, Neb.

STATE OF NEBRASKA, } ss:
Lancaster County, }

Be it remembered that on the day of the date hereof the last will and testament of Jacob Dawson, late of Lancaster county, Nebraska, deceased, being the instrument hereunto annexed, was duly proved before me, John Cadman, probate judge in and for said county, according to law, as and for the last will and testament of the said deceased, which relates to both real and personal estate, which said last will and testament and the proofs and examinations taken thereon are recorded in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the probate court of said county, at Lincoln, in said county, this 13th day of September, 1869.

[SEAL.] J. CADMAN,
Probate Judge.

71 *Opinion of the United States Supreme Court.*

GILES *vs.* LITTLE.

WOODS, *J:*

The contention of the plaintiff in error is that Edith J. Dawson took under the will of her deceased husband, Jacob Dawson, an estate for life, subject to be determined in case she contracted another marriage, with remainder to the heirs of Jacob Dawson, and that the power of disposal conferred on her by the will was only co-extensive with the estate which she took under the will—that is to say, the power was granted her to dispose of her life estate, and consequently that the estate conveyed by her deed to Cody determined upon her marriage with Pickering.

It was said by this court, in Clark *v.* Boorman's Executors, 18 Wall., 493, Mr. Justice Miller delivering the opinion, that "of all later instruments wills are the most inartificial, the least to be governed in their construction by the settled use of legal technical terms, the will itself being often the production of persons not only ignorant of law, but of the correct use of the language in which it is written. Under the state of the science of law as applicable to the construction of wills it may well be doubted if any other source of enlightenment in the construction of a will is of as much assistance as the application of natural reason to the language of the instrument under the light which may be thrown upon the intent of

the testator by the extrinsic circumstances surrounding its execution, and connecting the parties and the property devised with the testator and the instrument itself."

If we apply the methods thus indicated to the construction of the will of Jacob Dawson there can, it seems to us, be no serious doubt about its meaning.

72 According to the averments of the petition it appears that twelve days before his death Dawson executed his last will. At that time he was the owner of some real estate and of personal property of the value of nine hundred and fifty-eight dollars. He was the father of six living children, all of whom were minors, some of them very young, and all without any property in their own right. His wife, Edith J. Dawson, was the owner of real and personal property to the amount of ten thousand dollars or more.

The promptings of natural affection would lead a testator so situated to provide in his will not only for his wife, but also for his infant children.

The disposition of his property is made by a single sentence in his will. It seems clear that his purpose was to give to his wife an estate for life in his property subject to be divested on her contracting a second marriage, and on the determination of the wife's interest, either by her death or marriage, then an estate in fee to his children. No man unversed in technical rules of construction can, it seems to us, read this will without coming to this conclusion. To hold otherwise would be to suppose the testator in drafting his will was governed by abstruse rules of law in regard to the effect of his expressions, of which it is probable he never heard and had not the slightest conception.

The clause of the will which disposes of the testator's entire estate provides first for the payment of his lawful debts. The residue of his estate, after payment of debts, is then disposed of as follows: "To my beloved wife, Edith J. Dawson, I give and bequeath all my estate, real and personal, of which I may die seized, the same to remain and be hers, with full power, right, and authority to dispose of the same as to her shall seem meet and proper so long as she shall remain my widow." This part of the disposing clause of the

73 will is not open to doubt. The phrase, "so long as she shall remain my widow," refers to and qualifies the estate granted, as well as the power of disposition. The clear and undoubted meaning of the sentence is that as long as the devisee remains the widow of the testator his property, real and personal, shall remain and be hers, with full power to dispose of the same. This contruction, so far as it concerns the estate granted, is so obvious that no discussion can make it plainer. How large an estate the widow was empowered to dispose of will be considered hereafter.

But the testator, not satisfied with this unequivocal declaration of his purpose, and to leave no doubt of his intention, and to give direction of his property when the estate of his wife therein should determine, proceeds to add: "Upon the express condition that if she shall marry again, then it is my will that all of the estate herein be-

queathed or whatever may remain should (shall) go to my surviving children, share and share alike."

It would be hard to express more clearly the purpose of the testator to devise to his wife an estate during her widowhood, and on its determination a remainder in fee to his children.

The contention, however, of the defendants in error is that the testator by his will gave to his wife an absolute estate in fee-simple, with power, so long as she remained his widow, to dispose of it absolutely.

We find no warrant for this construction of the will, either in its terms or in the circumstances which surrounded the testator. The language is plain that the devisee was to take a life estate, subject to be determined on her second marriage, with a limitation over to the children of the testator. His purpose was clearly expressed to provide for his children as well as his widow, but to put it out of her power to disinherit his children. According to the construction
74 of the defendants in error the will gave her the power of absolute disposition during her widowhood, so that she could by her conveyance entirely divert the estate from his children, and, having done this, could contract a second marriage without the loss of any interest in the proceeds of the property devised to her by the testator.

We think it was not the purpose of the testator to devise an estate in fee to his wife. As already remarked the devise is limited by the words "so long as she shall remain my widow," but, even if these words were wanting, the limitation over to his children in case she should marry again would control and restrict the preceding words by which the estate was granted.

The case of Smith *v.* Bell, 6 Peters, 68, is in point. The will construed in that case declared: "I give to my wife, Elizabeth Goodwin, all my personal estate whatsoever and wheresoever and of what name, kind, and quality [what]soever, after payment of my debts, legacies, and funeral expenses, which personal estate I give and bequeath to my wife, Elizabeth Goodwin, to and for her own use and benefit, and disposing absolutely the remainder of said estate to be for the use of said Jesse Goodwin," son of the testator, mentioned in an earlier part of the will, "and I do hereby constitute and appoint my said wife, Elizabeth Goodwin, sole executrix of this my last will and testament."

The Court held that this was a devise to the testator's wife for life, with remainder to his son, Jesse Goodwin. Chief Justice Marshall, in delivering its opinion, said: "It must be admitted that words could not have been employed which would be better fitted to give the whole personal estate to the wife, or which would more clearly express that intention. But the testator proceeds: "The remainder of said estate to be for the use of the said Jesse Goodwin." These words give the remainder of the estate, after his wife's decease, to the son with as much clearness as the preceding words give the whole estate to his wife. They manifest the intention of the testa-
75 tor to make a future provision for his son as clearly as the first part of the bequest manifests his intention to make an

immediate provision for his wife. * * * The limitation in remainder shows that, in the opinion of the testator, the previous words had given only an estate for life. This was the sense in which he used them."

This case established conclusively the contention of plaintiff in error that the words of the will under consideration, granting an estate to the wife, grant only an estate for life, and not an estate in fee-simple.

But it is contended by defendants in error that there are words in the last cause of the will which imply an absolute power of disposition and give to the children only what may remain undisposed of in the wife's hands at the termination of her estate. The clause is: "If she should marry again, then it is my will that all the estates herein bequeathed, or whatever may remain, shall go to my surviving children, share and share alike!" The contention rests upon the words "or whatever may remain," and is that they imply that a part or all of the estate might be absolutely disposed of by the wife during her widowhood.

If the purpose of the testator, in the disposition of his property, is what the other parts of his will clearly indicate, then these words cannot be construed to change that purpose. They can have operation without giving them that effect. The testator was seized of real estate and possessed of personal property. Both were included in the devise to the wife, and she was to have the enjoyment of both during her widowhood. The use of many species of personal property necessarily consumes it. The words under consideration may, therefore, fairly be construed to refer to the personality, and the entire clause to give to the children of the testator a remainder in the real estate, and whatever of the personality was not consumed by the widow during her widowhood.

76 This construction is warranted by the language of this court in Smith *v.* Bell, 6 Peters, *supra*, which was as follows: "This suit is brought for slaves, a species of property not consumed by the use, and in which a remainder may be limited after a life estate. They compose a part, and probably the most important part, of the estate given to the wife 'to and for her own use and benefit and disposal absolutely.' But in this personal property, according to the usual condition of persons in the situation of the testator, there were trifling and perishable articles, such as stock on a farm, household furniture, the crop of the year, which would be consumed in the use, and over which the exercise of absolute ownership was necessary to a full enjoyment. These may have been in the mind of the testator when he employed the strong words of the bequest to her."

This passage shows that, in order to carry out the evident purpose of the testator, general words, which are applicable to property of different kinds, may be restricted to property of a particular kind. For instance, that the phrase "or whatever may remain" in the will under consideration may be limited to personal property only, though used in a sentence which applies to both real and personal estate.

On this subject the case of Green *v.* Hewitt, decided by the supreme court of Illinois, 12 Cent. Law Journal, 58, is precisely in point. The will in that case provided as follows: "Second. After payment of such debts and funeral expenses, I give and bequeath to my beloved wife the farm on which we now reside; also all my personal property of every description so long as she remains my widow; at the expiration of that time the whole or whatsoever remains to descend to my daughter, M. T."

The court held that under this devise the widow did not take a fee, and said: "The use of that expression (whatsoever re-
77 mains) is of no vital significance, and cannot be permitted to override the clearly expressed intention that the widow should take a life estate only."

The next position of the defendants in error is that, even conceding that the will gives the widow of testator an estate for life, yet it conferred on her during her widowhood the power to convey the estate in fee; and she having so conveyed, the defendants in error, who claim under her, have a good title.

But the authorities are adverse, and show that when a power of disposal accompanies a bequest or devise of a life estate, the power is limited to such disposition as a tenant for life can make, unless there are other words clearly indicating that a larger power is intended.

Thus, in Brant *v.* Virginia Coal and Iron Co., 93 U. S., 326, the words of the will were: "I give and bequeath to my beloved wife, Nancy Sinclair, all my estate, both real and personal—that is to say, all my lands, cattle, horses, sheep, farming utensils, household and kitchen furniture, with everything that I possess—to have and to hold during life, and do with as she sees proper before her death."

By virtue of this power the widow undertook to convey the fee of the land. But this Court, speaking by Mr. Justice Field, said: "The interest conveyed by the devise to the widow was only a life estate. The language admits of no other conclusion; and the accompanying words, 'to do with as she sees proper before her death,' only conferred power to deal with the property in such manner as she might choose consistently with that estate, and perhaps without liability for waste committed. The words used in connection with a conveyance of a leasehold estate would never be understood as conferring a power to sell the property so as to pass a greater estate. Whatever power of disposal the words confer is limited by the estate with which they are connected." (See also Bradley *v.* Wescott, 13 Ves. Jr., 445; Smith *v.* Bell, 6 Pet. Sup.; Boyd *v.* Strahan, 36 Ill., 55.)

78 It is next insisted by the defendants in error that the statute of Nebraska, according to which the will must be construed, favors the construction contended for by them. The statute declares: "Every devise of land in any will hereafter made shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall appear by the will that the devisor intended to convey a less estate." General Statutes of Nebraska, Sec. 124, Chap. 17. We are at a loss to see how the statute supports the view of one party more than the other. According to the con-

struction of the plaintiff in error, the devise vested in the widow of the devisor a life estate, remainder in fee to his children; according to the construction of defendants in error it vested the fee in the widow. By either construction the devise conveyed all of the estate of the devisor in the property devised. This is all the statute demands.

Lastly, it is claimed by defendants in error that it is the settled rule that where a devise whose estate is undefined is directed to pay debt, the devisee takes an estate in fee.

The rule has no application here, for, as we have seen, the estate of a devisee and executrix is clearly defined. A direction to pay the debts cannot enlarge it. The case of Smith *v.* Bell, 6 Pet., *supra*, is precisely in point against the application of the rule to this case.

We have no doubt about the true construction of this will. Edith J. Dawson took under it an estate for life in the testator's lands, subject to be divested on her ceasing to be his widow, with power to convey her qualified estate only. Her estate in the land and that of her grantees determine on her marriage with Pickering.

The judgment of the circuit court must therefore be reversed and the cause remanded to that court with directions to proceed in the case in conformity with this opinion.

Reversed.

79 Upon the back of said answer appear endorsements in words and figures following, to wit:

S. W. Little *et al. vs.* Ezekiel Giles. 202, F. Answer of Ezekiel Giles. Filed Apr. 5, 1882. Elmer D. Frank, clerk. L. C. Burr, sol'r for def't.

Thereupon, afterwards, to wit, on the 5th day of April, 1882, a cross-bill was filed in said case, whichsaid cross-bill is in words and figures following, to wit:

In Equity.

To the honorable the judges of the circuit court of the United States for the district of Nebraska.

Ezekiel Giles, of the county of Clay, in the State of Iowa, and a citizen of said State, brings his cross-bill of complaint against S. W. Little, D. B. Alexander, and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, A. P. S. Stewart, Mary A. McElhenney, Alexander C. Huester, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestis, Samuel Arthur, Jacob Freedman, O. P. Austin, Sarah A. Gable, Samuel Aughey, Clarinda A. Bumstead, Martha E. Snowden, Charles E. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Barnum, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney, all residents in and citizens of the State of Nebraska.

And thereupon our orator complains and says:

I. On the 15th of June, 1869, and thence to his death, Jacob Dawson, late of the county of Lancaster, in the State of Nebraska, was seized in fee of all those several pieces and parcels of land situated in said county and known and described as follows—that is to say:

80 The west half of the southwest quarter of section number nineteen (19), township number ten (10) north, of range number seven (7), and the east one-half of the northeast quarter, and the southeast quarter of the southeast quarter of section thirty-five (35), in township number ten (10) north, of range number six (6) east of the sixth principal meridian, in Lancaster county, State of Nebraska; also lots number three (3), four (4), five (5), and six (6), in block number fifty-four (54), in the then town, now city, of Lincoln, in the county and State aforesaid; and he was also possessed of considerable personal property.

II. On said 15th of June, 1869, the said Jacob made and published his last will and testament, the sole bequest in which was in words and figures following—that is to say:

"After all my lawful debts are paid and discharged, the residue of my estate, real and personal, I give, bequeath, and dispose of as follows, to wit: To my beloved wife, Edith J. Dawson, I give and bequeath all my estate, real and personal, of which I may die seized, the same to remain and be hers, with full power, right, and authority to dispose of the same as to her shall seem meet and proper, so long as she shall remain my widow, upon the express condition that if she shall marry again, then it is my will that all the estate herein bequeathed, or whatever may remain, shall go to my surviving children, share and share alike; and in case any of my children should have deceased leaving issue, then the issue so left to receive the share which said child would be entitled. I likewise make, constitute, and appoint my said wife, Edith J., to be executrix of this my last will and testament."

On the 22d of June, 1869, the said Jacob departed this life at said county of Lancaster without having revoked his last will and testament, leaving his wife, Edith J., and his children, Albert L., William R., Melita C., John Hampton, Minnie S., and Evaline, him surviving. On the 13th day of September, 1869, the said

81 Edith J. duly proved the said last will and testament of the said Jacob in the probate court of said Lancaster county, and the said will was by said court duly admitted to probate, and letters testamentary thereon were issued to her out of the same court, whereupon she took upon herself the execution of the said trust; and in pursuance thereof she caused the personal property, whereof the said Jacob died possessed, to be inventoried and appraised as required by law, the amount of which appraisement was $958, which inventory and appraisement she duly returned into said probate court, where the same remains of record and to which your orator prays leave to refer should it be necessary to do so; but the said Edith J., in her capacity as executrix of the said last will and

testament of the said Jacob, or in the exercise of her said trust, did no other act whatever.

III. On the — day of —— the said John Hampton Dawson departed this life intestate, leaving his brothers and sisters, his heirs-at-law, him surviving. On the — day of —— the said Evaline intermarried with one A. A. Kniceley, and on or about the 15th day of January she also departed this life, leaving her said husband her surviving. On the 15th day of September, 1879, the said Albert L., Evaline, and her said husband, A. A. Kniceley, joined in a deed of conveyance to Lionel C. Burr and Highland H. Wheeler, bearing date on said day, whereby they, as parties thereto of the first part, conveyed to the said Burr and Wheeler, as parties thereto of the second part, all and every the several pieces and parcels of land above described, whereof the said Jacob Dawson died seized, as by the said deed in your orator's possession, and ready to be produced as your honors shall direct, will upon reference thereto more fully appear. On or about the 5th day of January, 1882, the said Albert
L. Dawson made a further deed of conveyance, dated on said
82 day, whereby, as party thereto of the first part, the said Albert L. Dawson and wife conveyed to William A. J. Goodwin, as party thereto of the second part, all and every the said several pieces and parcels of land above described, and on the 13th day of January, 1882, the said Goodwin, by his certain deed of conveyance of that date, as party of the first part, reconveyed all and every the said several pieces and parcels of land to said Albert L. Dawson. On the 15th of September, 1879, William R. Dawson and Sarah H., his wife, Milita C., and Minnie S. joined in a deed whereby they, as party thereto of the first part, conveyed to said Burr and Wheeler, as parties thereto of the second part, all and every the several pieces and parcels of land first *as* above described, as by said deed in your orator's hands and ready to be produced *as* will appear, [and] as by the three several deeds last above mentioned in your orator's hands and ready to be produced as your honors shall direct will upon reference thereto more fully appear. On or about the 27th day of April, 1880, the said Burr and Wheeler, by their certain deed of conveyance of that date, as parties thereto of the first part, conveyed to your orators, as party thereto of the second part, all and every the several pieces and parcels of land, as by the said deed in your orator's possession and ready to be produced as your honors shall direct will upon reference thereto more fully appear; all which several deeds were, on or about the 11th day of January, 1882, duly recorded in the registry of deeds of the said county of Lancaster.

IV. In the year 1870 the said Edith J. laid out and platted as an addition to the city of Lincoln, [in] said county of Lancaster, that certain piece or parcel of land—being one of the pieces and parcels of land above described—known and described as the east half of the northeast quarter of section twenty-five, township ten north, of range six east, in lots, blocks, and streets, and called the same Dawson's additions to South Lincoln; that at divers days and
83 times prior to her intermarriage with the said Pickering—that is to say, the 15th of December, 1879—she sold and con-

veyed to divers persons and parties many of the lots in said addition, and also sold and conveyed all the lands first above described to divers persons and parties. Your orator does not know and is not able to set forth the dates, parties, and particulars of the said deeds, but the defendants in this his cross-bill claim and allege that by and under deeds so made by her or diverse mesne conveyances from her they respectively are seized in fee of parts of said premises whereof the said Jacob died seized, as the same appear in a memorandum thereof hereto annexed marked "A," which your orator prays may be taken as a part of this his cross-bill.

And so it happens that in respect of all and every the several pieces and parcels of land described in the said memorandum a dispute has arisen between your orator, on one side, and all of the said defendants, on the other, in respect to the right and title of the said premises.

V. And your orator submits that by the true construction of the said last will and testament of the said Jacob Dawson, deceased, the said Edith J. took in all and every the lands first above described an estate for life, determinable upon her marriage, and that when she married the said Pickering—that is to say, on the 15th day of November, 1879—all of the estate whereof she became by the said will seized, as well in her hands as in the hands of the said defendants, determined, and thereupon, by the terms of the said will and the deeds above mentioned to them made by the said Albert L., William R., Melita C., Minnie C., and Evaline, the said Burr and Wheeler became and were, and by virtue thereof and the deeds above mentioned of the said Burr and Wheeler to him, your orator is seized of all and every the several pieces and parcels of land mentioned and described in the said memorandum hereto annexed, marked A,

84 whereas the said defendants claim and insist that by the true intent and meaning of the said will the said Edith J. took under and by virtue thereof an estate in fee in said premises, with power to convey the same, and that by virtue of her several deeds above referred to, under which they severally claim they have an estate in fee in the said premises.

VI. Each of the said defendants acquired his claims in the said premises with full, actual knowledge of the terms and true construction of said will, and most of them knew of the construction which your orator insisted should be placed thereon. Certain of the said premises have been improved by such of the defendants as claim the same respectively, but the use and the rents and profits of the several and respective lots of land so improved by them exceed their expenditures or the value of the improvements made by them thereon. And the said claimants of the premises in the said memorandums, marked respectively numbers 1, 2, 3, and 4, have been leased and rented by them to divers persons and parties, and they are receiving at stated periods, and generally monthly, large sums as and from the rents of said premises, and a receiver ought to be appointed by this court to collect and hold said rents until the hearing thereof to abide its results, and to pay the same to the party hereto who shall be found entitled to the same.

VII. On or about the 23d day of August, 1880, in this honorable court for the district of Nebraska, your orator commenced his certain civil action against the said defendants, S. W. Little and one May, who was his tenant, and therein alleged the death of the said Jacob, the said will and the probate thereof, as hereinbefore stated, and the marriage of the said Edith J., and the conveyance from the said William R., Albert L., and Minnie S. Dawson, and the said Evaline Kniceley, and that by divers mesne conveyances your orator had become and was seized and entitled to the im-
mediate possession of that certain piece or parcel of land
85 described in the petition—that is to say: Lot number six,
in block fifty-four, in the city of Lincoln, Lancaster county, Nebraska, according to the original plat and survey of the town, now city, of Lincoln, except six inches off the entire east line of said lot, which supports the east party wall of said lot, and also alleged that the said Little claimed to be seized of the title to said lot of land by divers mesne conveyances from the said Edith J., and prayed judgment for the possession of said premises and for other relief. Thereupon the said Little and May duly appeared in this court to the said action, and demurred to said petition on the ground that the same did not state sufficient facts to constitute a cause of action. Such proceedings were had in said action that the questions were raised, made, and presented to said court for its consideration and judgment whether the said Edith J. became and was, by virtue of the said will, seized of an estate in fee-simple in the said lot of land, or whether she thereby became and was seized of a life estate determinable upon her marriage, and also whether she was, by the force and effect of said will, vested with a power to convey an estate in fee-simple in the said lot, or only an estate for life, determinable upon her marriage; that the said circuit court, being of opinion she took an estate in fee with full power to convey said estate, on the 21st day of February, 1881, rendered judgment against your orator and in favor of the said Little and May that the said petition be dismissed out of this court, and that said Little and May recover against your orator their costs, taxed at $41.45. Thereupon your orator, by due process in that behalf, removed said action and judgment into the Supreme Court of the United States; that the
respective parties thereto duly appeared in said Court and argued
86 the said action, and such proceedings were had therein that on the
12th day of December, 1881, the said Supreme Court rendered its judgment therein, whereby it reversed the said judgment of this court and adjudged that your orator recover against the said Little and May $49.73 for his costs therein expended and have execution therefor; and it was also by said Supreme Court remanded to said circuit court for further proceedings to be had therein in conformity with the opinion of the said Supreme Court. On the 6th day of February, 1882, a mandate in due form and according to the course and practice of said Supreme Court was issued out of the same directed to the judges of this court, commanding them that such execution and further proceedings be had in this cause in conformity with the opinion and judgment of said Supreme Court as according

to right and justice and the laws of the United States ought to be had, which mandate was on the 13th day of February, 1882, duly presented to and filed in the said circuit court, whereupon this court made and entered its order and judgment that its former aforesaid judgment be and the same was thereby vacated, annulled, and held for naught, and leave was given to said Little and May to answer the said petition of your orator, which they have done by plea in abatement, to which your orator prays reference if necessary, which action remains pending in said court undetermined.

VIII. Your orator has also brought like actions in this Court against Martha Alexander, A. P. S. Stuart, and Samuel G. Owen, and R. H. Oakley for the recovery of the several premises by them respectively claimed as aforesaid, which actions remain pending and undetermined. Said Stuart is not of pecuniary responsibility. Said Martha Alexander is without property in her own right.

IX. On or about the 27th of January last past the defendants herein, or certain of them, commenced their certain civil action in the district court of the State of Nebraska for the

87 county of Lancaster, wherein they impleaded with themselves as plaintiffs divers persons who have repudiated said action, and also impleaded with your orator the said Burr and Wheeler, Albert L. Dawson, William R. Dawson, Sarah H. Dawson, N. C. Dawson, M. S. Dawson, A. A. Kniceley, William A. J. Goodin, and Melita C. D. Tillman as defendants, and in their petition filed in said action they alleged that your orator claimed the premises first hereinbefore described by virtue of the said last will and testament of the said Jacob Dawson, deceased, and the construction hereinbefore insisted on by your orator. While they claimed the same under the said will by virtue of the construction thereof, also hereinbefore stated, they also in their said petition allege that your orator asserted his said claims for the fraudulent purpose of casting a cloud upon their title, and that the deeds to him of said premises hereinbefore referred to, and in said petition were made for the purpose of enabling your orator to sue them in this court, and were therefore a fraud upon its jurisdiction, and in and by their said petition they prayed an injunction restraining your orator from prosecuting any action against them, or either of them, in respect of said matters, and that the deeds hereinbefore mentioned, by and under which your orator claims said premises, be decreed to be cancelled and annulled, set aside, and held for naught, and that the title of the plaintiffs in said petition be declared good, and be quieted against the defendants therein. The Honorable S. B. Pound, the judge of said court, allowed an injunction in said action according to the prayer of said petition *ex parte*, and without notice to or hearing your orator in that behalf, and the said injunction remains in full force. Your orator has removed said action into this court, and has answered fully the charges of the said petition. Whereof your orator prays as follows:

88 1. That the said defendants answer this your orator's cross-bill according to the course and practice of the court, but not under oath, their answer under oath being hereby waived.

2. That it be by the decree of your honors declared that the true construction of the said last will and testament of the said Jacob Dawson, deceased, the said Edith J. took by and under the same an estate in the premises first hereinbefore mentioned and described for life, determinable upon her marriage; and that on the 15th of November, 1879, the said Burr and Wheeler became and were, and, by virtue of their deed to him, your orator becoming and is, seized in fee of said premises, and that the defendants in your orator's cross-bill are without right, title, or interest in the same or any part or parcel thereof.

3. That the said defendants be decreed by instruments, in form to be approved of by your honors, to release their claims in said premises and to surrender the same to your orators.

4. That an account be taken, under the directions of your honors, of the rents and profits of said premises, and of the amount thereof which has come to the hands of the said defendants, respectively, and that each of them be decreed to pay to your orator the sum which he shall be found to have received.

5. That a receiver of the said premises and the rents thereof be appointed, with the usual powers of receivers in such cases.

6. That the said defendant be decreed to pay the costs of this suit; and

7. That your orator may have all such other and further relief as the circumstances of the case require and as is agreeable to equity and good conscience.

89 May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this Court, directed to the said defendants, commanding them that they be and appear in this honorable Court at a day and under a penalty therein inserted, then and there to answer this your orator's cross-bill of complaint, and stand to, perform, and abide such order and decree as to your honors may seem just and equitable.

And your orator will ever pray, &c.

J. M. WOOLWORTH,
Of Counsel.
L. C. BURR,
Sol. for Complainant.

DISTRICT OF NEBRASKA, *ss:*

Lionel C. Burr being duly sworn says: I am one of the solicitors for the plaintiff in the above bill; he is a non-resident of said district; I have read said bill and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on information and belief, and as to those matters I believe it to be true.

LIONEL C. BURR.

Subscribed in my presence and sworn to before me this 5 day of April, 1882.

F. E. McCRARY, *D. C.*

90 *Memorandum "A."*

No. 1. Owen Oakley, 18 feet and 9 inches off the west side of lot 5, and 8 inches off the east side of lot 6, block 54.

No. 2. S. W. Little, lot 6, block 54, except 8 inches off east side thereof.

No. 3. Martha Alexander, part lots 4 and 5, block 54.
" 4. A. P. S. Stuart, " 3 and 4, " 54.
" 5. Samuel G. Owen, " 4, " 31.

Dawson's addition to South Lincoln.

No. 6. D. B. Alexander, lot 3, block 31.
" 7. Sarah J. Purcell, " 3, " 33.
" 8. Alexander C. Huestis, lots 5, 6, 7, 8, block 36.
" 9. Charles D. C. Huestis, lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, block 37.
No. 10. Samuel Aughey, lots 7, 8, 9, block 31.
" 11. Jacob Freedman, " 7, 8, " 29.
" 11. " " 11, 12, " 47.
" 12. O. P. Austin, " 6, " 38.
" 13. Sarah A. Gable, " 1, 2, 3, " 38.
" 14. Celinda A. Bumstead, all " 39.
" 15. Martha A. Snowden, lots 1, 2, 3, 4, 5, 6, block 40.
" 16. Charles C. Snowden, " 1, 2, 3, 9, 10, 11, 12, block 42.
" 17. " " 7, 8, 9, " 47.
" 18. Thomas Woods, " 7, 8, 9, 10, 11, 12, " 41.
" 19. John H. Swabold, " 10, " 32.
" 20. Samuel Henderson, " 5 & 6, " 32.
" 21. Joseph Richardson, " 4, " 32.
" 22. M. B. Cheeney, " 1 & 2, " 32.
" 23. Mary E. Maloney, " 4, " 44.
No. 24. Henry S. Gordon, executor, &c, all " 46.
91 " 25. Guy C. Barnum, lots 3 & 4, " 47.
" 26. Roda A. Prindel, " 5 & 6, " 49.
No. 27. Mary E. McSweeney, " 1, " 33.
" 28. Charles Hanna, " 9, " 37.
" 29. W. J. Van Dorn, southeast ¼ of southeast ¼ of sec. 35, T. 10, R. 6 E.
No. 30. G. W. Lashus.
" 31. George Warder.
" 32. Samuel Arthur, W. ½ of S. E. ¼ 19, 10, 7 E.
" 33. H. O. Snow.

92 Upon the back of said cross-bill appear endorsements in words and figures following, to wit:

202, F. S. W. Little *et al. vs.* Ezekiel Giles. Cross-bill. Filed April 5, 1882. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 1st day of May, 1882, a replication was filed in the case, which replication was in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

S. W. LITTLE
vs.
EZEKIEL GILES. } No. 202, F.

The replication of S. W. Little *et al.*, plaintiffs, to the answer of Ezekiel Giles, defendant.

The repliants saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiences of the said answer, for replication thereunto say that they will aver, maintain, and prove their said cross-bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things the repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill of complaint they have already prayed.

T. M. MARQUETT,
HARWOOD & AMES,
93 GALEY & ABBOTT,
Solicitors for Plaintiffs.

Upon the back of said replication appear endorsements in words and figures following, to wit:

No. 202, Doc. F. U. S. circuit court, district of Nebraska. In equity. Little *vs.* Giles. Replication. Filed May 1, 1882. Elmer D. Frank, clerk. T. M. Marquette and others, solicitors for plaintiff.

Thereupon, afterwards, to wit, on the 3d day of May, 1882, a stipulation was filed in said case, which said stipulation was in words and figures following, to wit:

In the United States Circuit Court, District of Nebraska.

Five cases of—

EZEKIEL GILES
vs.
S. W. LITTLE *et al.*, S. G. OWEN *et al.*, MARTHA ALEXANDER *et al.*, A. P. S. STUART *et al.*,

And a suit in equity of—

S. W. LITTLE *et al. vs.* EZEKIEL GILES *et al.*

EZEKIEL GILES
vs.
S. W. LITTLE *et al.* } Cross-bill.

It is hereby stipulated and agreed between the parties in the

above-entitled causes that the injunction in the equity suit shall be so far dissolved and so modified that this stipulation shall be in all respects good and valid; that the plea in abatement in the action of Giles *vs.* Owen *et al.* shall be tried Tuesday, the 16th day of this May term of the court, and that the decision thereon shall be taken and entered of record as the decision upon the pleas in the four other actions at law and also of the issues in the said suit in equity, so far as they are the same as are joined on the said pleas.

Omaha, May 3rd, 1882.

J. M. WOOLWORTH,
Att'y for Giles.
T. M. MARQUETTE,
For Defendant and for Plaintiff in Equity Suit.
94 HARWOOD & AMES,
GALEY & ABBOTT,
Att'ys for Defendants & for Plaintiffs in Equity Suit.
L. C. BURR, *Att'y for Giles.*

Upon the back of said stipulation appear endorsements in words and figures following, to wit:

196, F, and 202, F. Giles *vs.* Owen *et al.* Stipulation. Filed May 3, 1882. Elmer D. Frank, clerk. L. C. Burr, for pl't'ff.

Thereupon, afterwards, to wit, on the 10th day of May, 1882, an answer to cross-bill was filed in said case, which said answer to cross-bill was in words and figures following, to wit:

To the honorable the judges of the circuit court of the United States for the district of Nebraska:

The joint and several answers of S. W. Little, D. B. Alexander and Martha Alexander, his wife; Samuel G. Owen, R. H. Oakley, Sarah J. Purcell, A. P. S. Stuart, Mary A. McElhinney, Alexander C. Huestis, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestis, Samuel Arthur, Jacob Freedman, O. P. Austin, Martha F. Snowden, Thomas Woods, Charles C. Lumdin, W. S. Garrison, S. F. Storey, John H. Schwabold, Samuel Hudson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry D. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Barnum, H. O. Snow, Rhoda A. Prindle, Charles Hanna, and Mary A. McSweeney, who are admitted to be citizens of the State of Nebraska and residents therein, the defendants to this cross-bill of complaint of Ezekiel Giles, complainant.

The defendants, now and at all times hereafter saying and reserving to themselves and each of them all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors and uncertainties and other imperfections in the said complainant's said cross-bill of complaint contained, for
95 answer thereto, or unto so much and such facts thereof as this defendant is advised is or are material or necessary for them, or any of them, to make answer unto, they, these defendants, severerally answering, say that the conveyance of the several pieces or

parcels of land in said cross-bill mentioned of which Jacob Dawson died seized by the children of said Dawson then surviving him to Lionel C. Burr and Highland H. Wheeler was procured by the fraudulent representations and inducements held out by the said Burr and Wheeler to the said Dawson heirs; that it was made wholly without consideration; all of which will appear from the averments contained in the cross-bill filed in this suit by the said Dawson heirs, to which reference is hereby made and the attention of this honorable court is respectfully solicited; and your respondents deny the title, either legal or equitable, to the pieces or parcels of land of which Jacob Dawson died seized passed to the said Burr and Wheeler, or either of them, by reason of the conveyances mentioned in said cross-bill.

Your respondents further deny that the said Burr and Wheeler, by their certain deed of conveyance, ever conveyed, or attempted to convey, in the manner required by law, any of the pieces or parcels of land to the said Ezekiel Giles of which the said Jacob Dawson died seized, and deny that the said Ezekiel Giles has any interest, either legal or equitable, in the real estate, or any portion of it, of which the said Jacob Dawson died seized.

Your respondents further deny that any controversy or dispute has arisen solely between the said Ezekiel Giles on the one side and your respondents on the other in respect to the right and title to the pieces and parcels of land described in the memorandum annexed to the cross-bill, but aver the truth to be that your respondents, with others enjoined with them in the bill heretofore filed, are in fact the owners of and are in the possession of the property of which
96 the said Jacob Dawson died seized, and your respondents are seeking by their bill in equity heretofore filed in this suit to quiet their title against the fraudulent claims set up by the said Ezekiel Giles, a citizen of the State of Iowa, the said Burr and Wheeler, and the said Dawson heirs, citizens of the State of Nebraska, all on one side of the controversy which has arisen, and these respondents and other citizens of the State of Nebraska on the other side of such controversy.

And your respondents aver that said Giles is only a normal party to this suit, his name being used merely for the purpose of jurisdiction, and your respondents further deny that, by the true construction of the said last will and testament of the said Jacob Dawson, deceased, the said Edith J. Dawson took in all and every of the lands described in said cross-bill an estate only for life, determinable upon her marriage, but aver the truth to be that whenever these respondents shall have the opportunity of showing to this honorable court the facts and circumstances under which said last will was made and executed by the said Jacob Dawson, deceased, as by their bill in equity is set forth and alleged, it will be shown by the true construction of said last will and testament that Edith J. Dawson took the fee of said real estate with full power to dispose of and sell the same as to her should seem meet and proper.

And your respondents, further answering herein, deny that they, or either of them, acquired their title or claim to any of the real estate

of which the said Jacob Dawson died seized with any knowledge, notice, or suspicion that any other construction would be given to said last will and testament than that for which they now contend, and are ready to show to the satisfaction of the court having jurisdiction to determine the same. Your respondents further deny that the use and rents and profits of the several and respective lots of land improved by them exceeds or equals their expenditures,
97 or the value of the improvements made by them thereon: And your respondents further say that great injustice would result to them should a receiver be appointed by this court to collect and hold the rents these respondents are entitled to have and receive from the persons occupying any of the said premises.

Your respondents, further answering said cross-bill, deny that the circuit or Supreme courts of the United States, or either of them, had any jurisdiction to determine the pretended controversy which heretofore arose between the said Ezekiel Giles on the one part and S. W. Little and David May on the other part, and aver that the reason why such want of jurisdiction was not made fully to appear in said suit was because neither the said S. W. Little nor the said David May nor these respondents were cognizant of the facts at that time existing relating to the pretended conveyances to said Burr and Wheeler, and by them to said Giles.

Your respondents, further answering said cross-bill, deny that others impleaded with them in the bill of equity heretofore filed by these respondents and others in the district court of Lancaster county, Nebraska, have repudiated said action, and, whether such others do or not repudiate such action, these respondents, and each of them, are ready to show the facts and truth of the allegations contained in their said bill heretofore filed in this suit, and therefore ask that the relief be granted them, as heretofore prayed in their said bill, on the final hearing of this cause by the court having jurisdiction to hear and determine the same.

That while so in the occupancy of the said premises these defendants and their grantors have made lasting and valuable improvements on the said premises, respectively, now claimed and occupied by them, and which are of the cost and value of the following sums, to wit: On the premises claimed by S. G. Owen and R. H.
98 Oakley, being eighteen feet and nine inches off of the west side of lot five, and eight inches off the east side of lot six, block 54, a brick building two stories high and other improvements of the value of $5,000 and over; the premises claimed by S. W. Little, being lot six, block 54, except eight inches off the east side thereof, a brick building and other improvements, of the value of $6,000 & over.

On the premises claimed by Martha Alexander, viz: on part of lots 4 & 5, in block 54, a brick building of the value of $5,000 and over.

On the premises claimed by A. P. S. Stuart, viz: part of lots 3 & 4, of block 54, a brick building and other improvements of the value of $5,000 and over, all of which improvements were made in good

faith under their claim that they had an estate in fee in said premises derived under said will and before notice of defendants' title.

And that these defendants and their several grantors, while so in the *bona fide* possession and occupation of the said lots, have, for the use and benefit of the said complainants, in case it should be finally decreed that said title be quieted in him, severally paid large sums in the discharge of taxes, assessments, and liens duly and legally imposed by law upon said premises, and the said premises were thereby relieved from the charge and burden thereof, were paid after said complainant and his pretended grantors claim to have become seized in fee of said premises, and which, with interest allowed by statute, amount to the following sums:

On the said premises claimed by and occupied by Owen & Oakley, the sum of $3,000.

On the said premises claimed by S. W. Little, the sum of $3,000.

On the said premises claimed by Martha Alexander, the sum of $3,000.

On the said premises claimed by A. P. S. Stuart, the sum of $3,000; and the other defendants herein, for their several answers to the said cross-bill, says they are in the possession and occupancy of their said several pieces or parcels of land, and that, while in good
99 faith claiming they had a fee under said will, have made lasting and valuable improvements on said premises and have paid large sums in the discharge of taxes and assessments on said premises before these defendants had any notice of the complainants' alleged pretended claim to said premises.

And all these defendants deny the receipt of any rents and profits from said premises, and allege that any substantial benefit or enjoyment that they or their grantors have had or in any way received from said premises have accrued solely from these buildings, improvements, and dwelling-houses these defendants and their grantors have placed on said premises.

Therefore, these defendants submit that the said complainants ought not in equity to recover said premises or the rents and profits thereof; but if the court be of the opinion that said complainant should recover said premises and have an accounting for the rents and profits thereof, then these defendants insist that, in equity and by force of these several statutes of the State of Nebraska relating to occupying claimants of lands, an accounting should be taken of the value of all the lasting improvements placed on said premises by these defendants and their grantors, and of all taxes paid on said premises by these defendants and their grantors, with interest thereon provided by the laws of Nebraska for delinquent taxes, or to redeem such real estate from any tax sales, and that these defendants should have a lien on the said premises for the same, and these defendants should have the benefit of the statutes of Nebraska relating to occupying claimants.

And these defendants and each of them deny all and all manner of unlawful combination and confederacy wherewith they or any of them are by said cross-bill charged, without this, that [if] there is any other matter, cause, or thing in the said complainant's said cross-

bill of complaint contained material or necessary for
100 these defendants, or any of them, to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants or any of them; all of which matters and things these defendants and each of them are and is ready and willing to aver and maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and expenses in this behalf most wrongfully sustained.

TURNER M. MARQUETT,
HARWOOD & AMES,
GALEY & ABBOTT,
Solicitors for Defendants.

Upon the back of said answer to cross-bill appear endorsements in words and figures following, to wit:

No. 202, F. Ezekiel Giles *vs.* S. W. Little *et al.* Answer to cross-bill. Filed May 10, 1882. Elmer D. Frank, clerk. Turner M. Marquett, Galey & Abbott, & Harwood & Ames, sol's for def'ts.

Thereupon, afterwards, to wit, on the 31st day of May, 1882, a replication was filed in said case, which said replication is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

EZEKIEL GILES
vs.
SAMUEL LITTLE *et al.* } No. 202, F.

The replication of Ezekiel Giles to the answer of Samuel Little *et al.*, defendants, to the cross-bill of said Giles.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may he had or taken to the manifold insufficiences of the said answer, for replication thereto says that he will
101 aver, maintain, and prove his said cross-bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by the repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant [is] and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said cross-bill of complaint he has already prayed.

J. M. WOOLWORTH,
Solicitor for Giles.

Upon the back of said replication appear endorsements in words and figures following, to wit:

No. 202, Doc. F. U. S. circuit court, district of Nebraska. In equity. Ezekiel Giles *vs.* Samuel Little *et al.* Replication to answer to X bill. Filed May 31, 1882. Elmer D. Frank, clerk, by F. E. McCrary, D. C. J. M. Woolworth, solicitor for plaintiff.

102 Thereupon, afterwards, to wit, on the 15th day of November, 1883, depositions were filed in said cause in words and figures following—that is to say:

In the Circuit Court of the United States, District of Nebraska.

S. W. LITTLE & O'rs, Complainants, *vs.* EZEKIEL GILES & O'rs, Respondents, and EZEKIEL GILES & O'rs, Complainants on Cross-bill, *vs.* S. W. LITTLE & O'rs, Respondents on Cross-bill.	No. 202, Docket F.

Testimony taken before Oscar A. Mullon, special examiner appointed by said court in said cause, at the several times and places set forth in the report, the parties to the cause being represented by counsel, as set forth in the report.

On Friday, October 13th, 1882, in room No. 7, on the upper floor of the Government building, at Lincoln, Nebraska, in pursuance of the order of court in the cause, testimony was taken, the parties, S. W. Little & o'rs (complainants in the bill and respondents in the cross-bill), being represented by John H. Ames and Mr. S. W. Deweese, and the respondents in the bill and complainants in the cross-bill, Ezekiel Giles & o'rs, by Mr. L. C. Burr, evidence was adduced on the part of Ezekiel Giles & o'rs.

Burr offered in evidence the stipulation with regard to the testimony of W. T. Donovan and the written testimony of W. T. Donovan. Ames objected to the testimony as immaterial, incompetent, and not the best evidence. A copy of the stipulation here follows, and after the stipulation the written testimony itself is made up in this report on folios 2 to 10, inclusive, the said testimony being copied.

103 *Stipulation — Donovan's Testimony.*

The following is a copy of Exhibit A:

In U. S. Court for the District of Nebraska. In Equity.

LITTLE *et al. vs.* GILES *et al.*

LINCOLN, NEBRASKA, *Oct. 10th*, 1882.

It is hereby stipulated and agreed that the evidence of W. T. Donovan may be taken and reduced to writing by Trivitt at 1 o'clock p. m., on the said tenth day of October, 1882, the said evidence to

be used and read in evidence the same as if taken by Oscar A. Mullon, and that said Mullon may certify the same to be evidence in said cause as taken by him.

L. C. BURR, *Att'y for Giles.*
T. M. MARQUETTE, HARWOOD & AMES.

Respectfully referred to Mr. T. M. Marquette, as I will be busy at the time mentioned.

J. H. AMES.

Upon the back of said Exhibit A appear endorsements in words and figures following to wit: "Ezekiel Giles *vs.* S. W. Little. Stipulation. L. C. Burr, for Giles."

The following is a copy of the testimony, the document of which this is a copy being marked Ex. B.

Donovan's Testimony as to Value in '69 *and* '70 and *Block* 54.

W. T. DONOVAN being examined by Mr. BURR, testified as follows:

You may state your name, age, place of residence, and occupation.
My age is 63 and past; name, W. T. Donovan; residence, Lincoln.
How long have you resided in Lincoln, Nebraska?
Since its birth; I shall have been in this county 25 years.
104 What has been your business during that time?
Farming and stock raising and dealing in real estate.
You platted and laid out the town called South Lincoln, did you not?
Yes, sir.
South Lincoln adjoins Dawson's addition to South Lincoln on the west, does it?
Yes, sir.
Were you acquainted with Jacob Dawson in his lifetime?
I was.
Were you acquainted with his property and real estate?
Yes, sir.
Were you acquainted with the real estate of his widow, Editha J. Dawson?
A. I was.
Q. Were you acquainted with the value of the east half of the southwest quarter of section 25, town 10, range 6 east, in June, 1869, familiarly known as the Capitol addition to the city of Lincoln?

Objected to by Mr. Ames as immaterial.

A. Yes, sir.
Q. Can you tell when the State capital was located at Lincoln?
A. August, 1867; I think the 12th, but I won't be positive.
Q. Can you tell what State buildings were being erected or had been erected June, 1869, or was in the course of erection?
A. The capitol and the university, and the asylum, I think, was also under way, and I think the old stone penitentiary

105 Q. Had the State held any auctions disposing of its lots in Lincoln prior to June, 1869?

A. Yes, sir.

Q. About how many of them; do you know?

A. How many lots?

Q. Yes.

A. I cannot tell.

Q. Had it any left at that time?

A. Yes; it had some left yet.

Q. State what the value of the east half of the southwest quarter of section 25 above mentioned was in the month of June, 1869.

A. The value of the eighty acres you seemed to convey there would be in my opinion about $20,000—$18,000 to $20,000.

Q. What was it worth on the 10th day of May, 1869?

A. About the same valuation—$18,000 to $20,000.

Mr. Ames here enters objection to all the above questions as immaterial and irrelevant.

Q. How far from the capitol building is the northwest corner of this east half of southwest quarter of twenty-five, ten, six?

A. I think it is about four hundred feet from the southeast quarter of the capitol square east, and five hundred feet south—I am not very positive about the line running down.

Q. Are you acquainted with the defendant in the cross-bill, A. P. S. Stewart?

A. Yes, sir.

Q. Are you acquainted with the lot that he purchased, lot
106 8, that he received a quit-claim deed from one Sherwin?

A. Yes, sir.

Q. For whom did you act in the negotiation of that sale?

A. I was acting for Mr. Sherwin.

Q. As his agent?

A. Yes, sir.

Q. Did you ever have any conversation with Stewart?

A. I did.

Q. I mean pertaining to Dawson's will?

A. I have talked with Mr. Stewart at different times about the Dawson will.

Q. Prior to the time and pending the negotiations did ever Sherwin or you have any conversation with him?

A. I did.

Q. You may state what conversation that was.

Objected to as immaterial, incompetent, and irrelevant.

A. Mr. Stewart and I talked about the value of the property, its central location, and the probability of its remaining as valuable, and that it would always be rental property. He asked me that particularly, if I thought it would always remain as valuable and be rentable at all times, and I told him that I thought it would. Its location would demand it always. And he spoke of Dawson's will. He said that he had faith in the will and did not think that it would

ever be disturbed, and he thought he would risk it. I proposed to him I could procure a deed from the other party for a consideration and thereby perfect his title, but he was under the impression that Sherwin's title was good enough; he declined purchasing the other title, considering that good enough.

107 Q. What was said between you and him as to the value of the property if he received a good and perfect title?

Objected to as incompetent and immaterial and irrelevant.

A. Well, I believe our conversation was like this: that he considered the property cheap enough in the way it was renting; we figured up the amount of rents to see what per cent. it would pay on the valuation then put on it, and he thought the property a very good purchase at that price if the title was good, which he believed it was.

Q. In acting for Mr. Sherwin, did you or Mr. Sherwin negotiate with him to give him a warranty deed for any price? If so, state the price Mr. Sherwin negotiated with him to convey a warranty to the title.

Objected to as incompetent, immaterial, and irrelevant.

A. I do not know of any conversation between him and Sherwin regarding a warranty deed; Sherwin and I talked that matter over, but Mr. Stewart and I talked about the title from Mr. Giles, and Burr as his agent.

Q. State what conversation you had with Stewart.

Objected to as incompetent, immaterial, and irrelevant.

A. I believe I told him that I could procure him a perfect warranty deed from the heirs—I think I expressed it in that way—from the Dawnson heirs, through their agent, somebody, for twelve or fifteen hundred dollars. I think I finally agreed that I could do it for twelve hundred dollars.

Q. What did Mr. Stewart say?

A. He was not disposed to pay for that title; he considered
108 that the Dawson will was good, and was willing to stand by it.

Q. Are you acquainted with the value of real estate at the present time in Lincoln?

A. Somewhat.

Q. Are you acquainted with the premises commonly called "Codey's block," in this city?

A. Yes, sir.

Q. Is Codey's block occupied by the defendants in this cross-bill, Stewart, Owen, Oakley, Alexander, and, next adjoining in the west, S. W. Little?

A. Yes, sir.

Q. What are those buildings worth as they now stand?

Objected to as immaterial, incompetent, and irrelevant. Question withdrawn.

Q. Do you know the value of improvements or buildings standing upon the property—upon the real estate—there, as they now stand?

A. I have not examined any of the buildings except the one that is occupied by Redford as a store; I believe that all the others were built in the same manner on a sandstone foundation, but that one I know is. I would think the valuation of the buildings at the present time about two thousand or twenty-two hundred dollars each.

Mr. Ames objects to that portion of the answer as respects the value as incompetent, immaterial, and irrelevant, and not responsive to the question.

Q. For each building?

A. Yes, sir; particularly the one with the shoe store on; that is the one I have examined more particularly more than the
109 others, but if they have the same kind of foundation as this I don't think there is much difference in the valuation of them.

Q. What is the value of the improvements upon S. W. Little's building—the one standing to the west?

Objected to as incompetent, immaterial, and irrelevant.

A. That building was built later and is a better building.

Q. When was it built?

A. I cannot say when it was built; I do not remember; I do not remember whether it was permanently built or whether the front was built in when the sidewalk was lowered; but from my present knowledge of the building I think that one is worth a couple of hundred dollars more than the others.

Q. When were the other three, or Codey's block, built?

A. I do not remember the exact date.

Q. If Mr. Codey purchased the life estate of Mrs. Dawson in the fall of 1870, when were the buildings built?

110 Objected to as incompetent, immaterial, and irrelevant.

A. I am at a little loss on that; I think the next summer, 1871; but I am not positive.

Q. Speaking generally, how many years ago were those three buildings in Codey's block built?

A. In 1871—the fall of 1871. It was eleven years ago, I think; as I said before I am not positive about them being built in 1871.

Q. State whether or not to your knowledge the grade has been lowered in front of these buildings; and, if so, when was it done; and how much was it lowered, and what alterations, if any, were made in the building standing upon this real estate.

Objected to as incompetent, immaterial and irrelevant.

A. The grade was lowered.

Q. How much?

A. If my memory serves me right, it was a little over two feet; I am not very positive about that; the floors were lowered and a new front put in.

Q. State how much the floors were lowered.

A. I cannot do it; I do not know.

Q. In how many of the buildings were the floors lowered?

A. I think the floors were lowered in all of them except in a little building which, I think, was built afterwards. It is so many years I am not positive about it.

Q. In what condition, after lowing the floors, did it leave the cellars?

Objected to as incompetent, irrelevent, and immaterial.

A. It left them too low for general use; when persons would go in they would have to stoop down; I do not remember the exact height; I think it was five and one-half or six feet; as I said before, I had not been in the stores except the shoe store. They may have excavated some out of the cellars at other times; that I do not know anything about.

Q. You have not examined the cellars since?

A. No, sir.

Q. Bedford is the tenant of defendant Stewart, is he not?

A. Yes, sir.

Q. Were you acquainted with the premises kown as Codey's block in the lifetime of Jacob Dawson?

A. I was.

Q. Describe the buildings, if any, that stood thereon then.

Objected to as incompetent, immaterial, and irrelevant.

111 A. It was a sandstone building, pretty large size.

Q. Give about the size of it.

A. I do not know whether I can or not; I suppose it was a two-story building—a part of a basement and a story and a half, probably thirty-five to forty feet square—pretty nearly square. There was a hallway and a room on each side—well, perhaps, it was 30 by 35 feet. I will not be positive about the size; I should say it was 30 to 35 feet and perhaps 40.

Q. How many stories did you say it was?

A. Well, it was a story and a basement; I would call it a two-story building, perhaps.

Q. What was it used for?

A. A dwelling-house.

Q. Was it used for a hotel any time?

A. No, sir.

Q. What became of this building?

Objected to as immaterial and irrelevant.

A. It was torn down; it was built of sand rock and it was torn down. I do not remember what the rock was used for; I think, though, partially for the foundation of the other buildings. If my recollection serves me right I think that is what they were used for.

Q. By whom was it torn down?

A. I cannot answer; I do not know by whose orders it was torn down.

Q. About when was it torn down?

A. If my recollection serves me right it was in the fall of 1870 or spring of 1871.

Q. It was torn down then at the time——

112 (Witness interrupting.) It may have been torn down in 1870.

Q. It was torn down then at the time the three stores were erected?

Objected to as immaterial, incompetent, and irrelevant.

A. It was torn down before they were erected; I do not know how long.

Q. Can you tell the value of that building?

A. No, sir.

Cross-examination by Mr. AMES:

Q. Col., what was the population of Lincoln in 1869, in May and June?

Objected to as not cross-examination.

A. I do not remember.

Q. About what was the population?

A. I do not know; perhaps three or four thousand; I think there was three thousand inhabitants; I built the Tichenor house in 1868; I do not mean the Tichenor hotel—the dwelling this side of it.

Q. Do you know of land being sold in the vicinity of what is now Capitol addition during the year 1869 by the acre?

Objected to as not cross-examination.

A. Yes, sir.

Q. In what direction from that addition?

A. South.

Q. What did it sell for by the acre, and for cash rates?

Same objection as above.

A. I had reference to the school land being sold there.

Q. Do you know what land sold there for cash?

113 A. Not positive of my own knowledge, but I am under the impression they were sold for two or three hundred dollars per acre.

Q. What is land adjoining that Capitol addition worth now by the acre; what is the market value for cash?

Objected to as not cross-examination and immaterial, irrelevant, and incompetent.

A. Six or eight hundred dollars.

Q. What is the present population of Lincoln?

A. Twenty thousand; I believe you call it eighteen, perhaps, but they claim twenty thousand.

Q. Do you know when the corner-stone of the University was laid; what month and year?

A. June, 1870, was it not, or 1869?
Q. My recollection is you were present.
A. I was present, but I did not take any note of the date; I don't of such things.
Q. What is your best recollection about it?
A. I guess in 1869.
Q. What time in 1869?
A. In June.
Q. June, 1869?
A. I am not positive about it.
Q. Do you know when the erection of the permanent penitentiary building was commenced?
A. I don't know the exact date.
Q. Do you know what year it was?
A. Do you mean the present construction?
Q. Yes, sir; the other was a temporary building and so
114 designated in the act for its erection.
A. I won't say that I know; I deeded them the land it was built on in 1869.
Q. Do you know whether or not the penitentiary building that you testified about in your examination-in-chief was the permanent penitentiary building located in this place?
A. We were speaking of the old stone building.
Q. Yes, sir; do you know whether that was erected for a temporary or a permanent building?
A. It was temporary. I do not know what time the permanent structure was commenced.
Q. Do you know by whom the seat of government of the State was located at this place?
A. Yes, sir.
Q. By whom?
A. The Governor, secretary, and auditor, constituting a commission for the purpose.
Q. Do you know when their action locating it was ratified by the State?
A. At the sitting of the Legislature in 1867 or 1869. No, I mean it was in '69 or '70.
Q. You say that you proposed to Mr. Stewart to obtain for him the adverse title to the one he was buying?
A. I did.
Q. By what authority did you make that proposition to him?
A. By what authority?
Q. Yes; who authorized you to make the proposition to sell him the adverse title?
A. I went of my own accord and ascertained what I could obtain that title for. Mr. Sherwin sent for me to sell the
115 property, and if I could get a quit-claim deed from the heirs that was my business.
Q. You say you proposed to Stewart to obtain the deed for twelve hundred dollars?
A. About twelve hundred dollars.

Q. By what authority did you tell him?
A. I was informed of that fact.
Q. By whom?
A. By Burr and Wheeler.
Q. You are not a carpenter or builder or contractor, are you?
A. No, sir.
Q. Have you ever erected business buildings of brick or stone?
A. No, sir; I have never built any buildings of any kind; I have had buildings built for myself.
Q. Do you know what the cost of these buildings were at the time of their erection—of Codey's block?

Objected to as incompetent.

A. I do not.
Q. Do you know the cost of building at that time?

Objected to as incompetent, immaterial, and irrelevant.

A. Lumber was higher at that time.
Q. Do you know what was the value of these buildings at the time they were completed?

Objected to as incompetent, immaterial, and irrelevant, and not cross-examination.

A. I was speaking of the value of those buildings at the present time.
116 Q. Do you know the value of the buildings at the times they were erected?
A No.
Q. You do not know the value of such buildings at that time?
A. I do not know the exact cost of brick or lumber—what it was worth at that time; I might have known at that time.
Q. You say that one of these buildings was erected, to your knowledge, with a sandstone foundation; how does that affect the value of the buildings at all as compared with any other material?
A. The sandstone is of the very poorest nature, and when it is under the ground and gets wet it is not very substantial. I believe we have had experience in that in the University building.
Q. How does it injure it?
A. I do not know, except lowering the floors.
Q. Was anything the matter with the building owned by Stewart with the foundation?
A. I think not.
Q. Standing there firm in its place?
A. Yes, sir; I found nothing wrong when I was there; I do not know how it is now.
Q. Is that stone crushed?
A. No; I did not examine particularly.
Q. Did you notice whether the walls were out of plane?
A. No, sir.
Q. As far as you observed, the foundation looks as though it is as good as any other building?

117 A. I only went into the alley and saw the foundation was standing on a sandstone foundation, but paid no particular attention to it.

Q. How large are those store buildings?

A. Twenty feet and something; I do not remember just how long.

Q. In width and how long?

A. I think the building is about eighty feet.

Q. Of what material is the superstructure?

A. Brick.

Q. About how many brick do you think is in one of the store buildings?

A. I do not know.

Q. Have you any idea?

A. No.

Q. Of what material are the buildings finished?

A. Finished with wood.

Q. Have you any idea of how much lumber is worth in them?

A. No.

Q. In your opinion what is the glazing worth in the building?

A. I cannot tell, sir.

Q. Do you know what sort of a roof they have on them—of what material the roof is made?

A. Tin roof.

Q. Do you know the cost of the roofing?

A. No, sir; I never was on the top of the building; I believe, though, they are tin.

Q. The residence built by Jacob Dawson on his property, at the time of his death, was also built of the same material of sandstone?

A. Yes, sir.

118 Q. And the first or lower story of the building was all or nearly all of it under ground, was it not?

A. Yes, sir; more than half; about two-thirds of it.

Q. Was there the same objections to the stone so far as it was underneath the ground to that building as it is to the others?

A. It depends altogether where the rock was gotten. The first stone taken out of these quarries were as strong as Pharaoh's heart, and the rock gotten after that was soft and not fit for building. I do not know which kind of rock were used in these buildings; I am not positive; but I think the same rock went into these foundations, but how much I do not know.

Q. Do you know when the erection of the present permanent asylum building was begun here?

A. I am not positive; I cannot fix the date.

Q. Do you remember when the erection of the asylum was begun here?

A. I think it was in 1868.

Q. Do you know of what material it was finally constructed?

A. Sand rock; as to the dates I am not very positive.

Q. In 1869 do you know what was the general public opinion of the permanence of the location of the capital at Lincoln?

Objected to as not cross-examination.

A. In 1869 I was away from here all of that year.
Q. You say you do not know what the general opinion was?
A. It was very conflicting.

Mr. Burr here objects to all of these questions as incompetent, immaterial, and irrelevant.

119 Q. Don't you know, as a matter of fact, from the time of the location of the capital until 1875 that there was a general lack of confidence in the permanence of the location of the seat of government at Lincoln?

Objected to as incompetent, immaterial, and irrelevant, and not cross-examination.

A. I do not know—I cannot answer.
Q. Your residence was in the city all of that time?
A. I believe it was.
Q. And you do not know what the opinion—the general public opinion—of the city was in 1867 to 1875, as to the permanency of the location here?
A. I suppose it was pretty evenly divided.
Q. In your opinion, would the confidence in the permanency of this location affect the value of real estate in the community at that time?

Objected to as incompetent, immaterial, and irrelevant.

A. During what year?
Q. During any time would it affect the market value of real estate in and about the location.

Same objection as above.

A. I do not think it did very much.
Q. You do not think that is a limit?
A. No, sir—no, sir; I think outside causes affect the value of real estate; I know I sold outside lots in Lincoln, in South Lincoln, for two hundred and two hundred and fifty dollars.

Mr. Burr withdraws last objection.

Q. What was the purchase price on the sale of this property to Stewart?
120 A. Seven thousand six hundred dollars.
Q. Did you consult any one except Burr and Wheeler with reference to procuring the outstanding title, the adverse title, at the time you negotiated with Stewart?
A. No, sir.
Q. When was the negotiation made; at what time?
A. I do not remember the date; it was just about a week before Sherwin went away; and Sherwin went away in the fall of 1881; just a few days before he went away.
Q. Did you, at the time of Jacob Dawson's death, [know] what land he had; that is, the real estate belonging to him?
A. I did.

Q. How much of it was there situated in Lincoln?

A. Well, he handled this on O street and Dawson's addition to South Lincoln, forty acres of McKessen, part of Young's, and part of Carter's.

Q. At the time of his death what was that forty acres, now consisting of Dawson's addition to South Lincoln, worth?

Objected to as not cross-examination, and immaterial, irrelevant, and incompetent.

A. About 12 or 14 thousand dollars. I bought the other at that time for ten and a half and the profits made out of it.

Redirect by Mr. BURR:

Q. What was your opinion as to the permanent location of the capital at Lincoln?

A. I never doubted it.

Q. Did you say in your cross-examination that you sold lots near the penitentiary in the year 1869 for $2,500 per acre?

121 A. In 1869 or 1870.

Q. How far from these lots on O street is the penitentiary?

A. Two and a half miles exactly.

Q. The lots that you speak of in your cross-examination as being sold for two hundred and two hundred and fifty dollars was next adjoining on the west to Dawson's addition to South Lincoln, were they not?

A. Yes, sir.

Q. The school land that you speak of as being sold at $250 and $300 per acre was, and is still, further away from Lincoln than either Capitol addition or Dawson's addition to South Lincoln?

A. No, sir; it joins Capital addition on the south and adjoins Dawson's to South Lincoln on the east.

Q. And the city of Lincoln lies to the northwest?

A. Yes.

Recross-examination by Mr. AMES:

Q. Do you know when the act was passed by the Legislature providing for the purchase and site and erection of the penitentiary at Lincoln?

A. It was all under the same act. The commissioners were authorized to select the site on which to build the city of Lincoln, and we donated to them nearly seven hundred acres of land for the State of Nebraska.

Mr. Ames repeats above question.

A. Well, I will have to answer no, because they never purchased the site. Nuckolls and I gave the land to the State for the erection of the penitentiary; we donated to the commissioners 10

122 acres. They then turned round and traded with Hilton for the present site they now occupy. I was under the impression that the commissioners had only power to make that location

under the act authorizing them to locate the seat of government and all the public buildings.

Q. You mean to say that you are under the impression the land donated to you and Nuckolls, and also the exchange for the present location, was all done under the authority of the act creating the commission?

A. I know at the first session after that was made their acts and doings were ratified.

Q. Do you know upon what terms the school lands, as you have testified, were sold as to the time of payment and rate of interest?

A. I think it was sold on time; ten per cent. down and six per cent. interest.

Q. Do you know whether the land was taxable?

A. It was not until some time after the purchase.

Q. Do you know what was the ruling rate for money here at that time?

Objected to as immaterial, incompetent, and irrelevant, and not cross-examination.

A. The legal rate was twelve per cent.

Q. I want to know the ruling rate.

A. I suppose it was customary to ask two per cent. a month.

W. T. DONEVAN.

I hereby certify that this is all the evidence taken under stipulation, dated Oct. 10, '82; that the same is a correct copy of and transcription of my short-hand notes.

C. L. TREVITT,
Reporter.

Received of L. C. Burr 6 dollars, fee for above testimony.

C. L. TREVITT.

123 *Patent to Editha J. Dawson.*

Burr offered certified copy of patent from the United States to Editha J. Dawson for the southwest quarter of section 25, township 10 north, of range 6 east, of the 6th principal meridian.

Ames objected [as] immaterial and irrelevant.

The paper was marked Exhibit C, and the following is a copy thereof:

The United States of America to all to whom these presents shall come, Greeting:

Whereas, in pursuance of the act of Congress approved March 3rd, 1855, entitled "An act in addition to certain acts granting bounty lands to certain officers and soldiers who have been engaged in the military service of the United States, there has been deposited in the General Land Office of the United States warrant No. 44014 for 160 acres in favor of Thomas Simmons, private, Captain Robinson's company Ohio militia, War 1812, with evidence that the same had been duly located upon the southwest quarter of section twenty-

five, in township ten north, of range six east, in the district of land subject to sale at Nebraska city, Nebraska, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general, the said warrant having been assigned by the said Thomas Simmons to Editha J. Dawson, in whose favor said tract has been located:

Now, know ye, that there is therefore granted by the United States unto the said Editha J. Dawson as assignee, as aforesaid, and to her heirs, the tract of land above described, to have and to hold the said tract of land, with the appurtenances thereof, unto the said Editha J. Dawson, as assignee as aforesaid, and to her heirs and assigns forever.

In testimony whereof I, Andrew Johnson, President of the
124 United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the fifteenth day of June, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States the ninetieth.

By the President: ANDREW JOHNSON,
By EDW. D. NEILL, *Sec'y.*

Recorded vol. 180, page 292.

[L. S.] J. N. GRANGER,
Recorder of the General Land Office.

Upon the back of Exhibit C appear endorsements in words and figures following, to wit:

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, J. H. McClay, county clerk of said county, hereby certify that the above and foregoing is a true and correct copy of the original now of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said county this 7th day of October, A. D. 1882.

J. H. McCLAY, [SEAL.]
County Clerk.

Patent. The United States to Editha Jane Dawson. Filed for record Aug. 3rd, 1867, at half-past one p. m., and recorded in Book A of deeds at page 113.

BURR: We now offer in evidence a certified transcript of all the proceeding had and done in the probate court of Lancaster county, Nebraska, in the matter of the last will and testament of Jacob Dawson, deceased, duly certified to by the county judge of Lancaster county.

The document was admitted and marked Exhibit D, the following being a copy thereof:

Will of Jacob Dawson and Proceedings on Probate of the Same.

125 In the Probate Court, Lancaster County, Neb.

In the Matter of the Last Will and Testament of JACOB DAWSON, Deceased.

Be it remembered that heretofore, to wit, on the 9th day of August, A. D. 1869, Editha J. Dawson, the sole executrix named in the last will and testament of Jacob Dawson, late of the county of Lancaster and State of Nebraska, deceased, appeared in open court, before the probate judge of said county, and made application to have said last will and testament, which relates to both real and personal estate, proved.

And on such application the probate judge did ascertain by satisfactory evidence who were the widow, heirs, and next of kin and the persons interested in the estate of the said deceased, and their respective residences; and the said probate judge did thereupon cause a notice, in due form of law, directed to the heirs and next of kin and persons interested in the estate of the said deceased (the said executrix, Editha J. Dawson, being the widow of said deceased), requiring them to appear before the said probate judge, at his office, in Lincoln, in said county, on the 13th day of September, 1869. Satisfactory evidence by affidavit was produced and presented to said probate judge for the due service of said notice, in the mode prescribed by law.

And on that day, no one appearing to oppose the probate of said will, such proceedings were thereupon afterwards had that the probate judge took the proof of said will, hereinafter set forth, and adjudged the said will to be a valid will of real and personal estate, and the proofs thereof to be sufficient; which said last will and testament and proofs are as follows—that is to say:

126 *Will.*

In the name of God, Amen. I, Jacob Dawson, of the town of Lincoln, in the county of Lancaster and State of Nebraska, being of sound mind and memory, and considering the uncertainty of this frail and transitory life, do therefore make, ordain, publish, and declare this to be my last will and testament—that is to say:

After all my lawful debts are paid and discharged the residue of my estate, real and personal, I give, bequeath, and dispose of as follows, to wit:

To my beloved wife, Editha J. Dawson, I give and bequeath all my estate, real and personal, of which I may die seized, the same to be and remain hers, with full power, right, and authority to dispose of the same as to her shall seem meet and proper, so long as she shall remain my widow, upon the express condition, however, that if she should marry again then it is my will that all of the estate herein bequeathed, or whatever may remain, should go to my surviving children, share and share alike, and in case any of my children should have deceased leaving issue, then the issue so left to receive the share to which said child would be entitled. I likewise make,

constitute, and appoint my said wife, Edith J. Dawson, to be executrix of this my last will and testament, hereby revoking all former wills made by me.

In testimony whereof I have hereunto subscribed my name on this tenth day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

JACOB DAWSON.

The above-written instrument was subscribed by the said Jacob Dawson in our presence, and acknowledged by him to each of us, and he at the same time published and declared the above
127 instrument so subscribed by him to be his last will and testament; and we, at the testator's request, and in his presence and in the presence of each other, have hereunto signed our names as witnesses, and have written opposite our respective names our respective places of residence. Done on this 10th day of May, 1869.

HENRY S. JENNINGS,
Lincoln, Nebraska.

J. A. HELLMAN,
Lincoln, Nebraska.

Proofs.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

Be it remembered that on this 13th day of September, A. D. 1869, before me, John Cadman, probate judge in and for said county, personally appeared John A. Helman, who, being by me first duly sworn, deposes and says that he is a resident of said county, and has been for the space of three years last past; that he was well acquainted with Jacob Dawson in his lifetime, the testator named in a certain instrument in writing now shown to this deponent, purporting to be the last will and testament of the said deceased, and bearing date the 10th day of May, A. D. 1869; that he was present and saw the said Jacob Dawson sign his name to said instrument, and that at the time he so signed his name he declared the said instrument to be his last will and testament in the presence of this deponent and H. S. Jennings, and requested this deponent and the said H. S Jennings to subscribe the same as attesting witnesses thereto; that thereupon this deponent, in the presence of the said Jacob Dawson and H. S. Jennings, subscribed his name to said instrument as an attesting witness; that the said Jacob Dawson, at the time he so executed said instrument, was a citizen of the United States, an inhabitant of the county of Lancaster, of full age, of
128 sound, disposing mind and memory, and not under any restraint.

J. A. HELMAN.

Subscribed in my presence and sworn to before me this 13th day of September, 1869.

J. CADMAN,
Probate Judge.

STATE OF NEBRASKA, } ss:
Lancaster County, }

Be it remembered that on this 13th day of September, A. D. 1869, before me, John Cadman, probate judge in and for said county, personally appeared H. S. Jennings, who, being by me first duly sworn, deposes and says that he is a resident of said county, and has been for the space of two years last past; that he was well acquainted with Jacob Dawson, in his lifetime, the testator named in a certain instrument in writing, now shown to this deponent, purporting to be the last will and testament of the said deceased, and bearing date the 10th day of May, A. D. 1869; that he was present and saw the said Jacob Dawson sign his name to said instrument, and that at the time he so signed his name he declared the said instrument to be his last will and testament in the presence of this deponent and the said John A. Helman, and requested this deponent and the said John A. Helman to subscribe the same as attesting witnesses thereto; that thereupon this deponent, in the presence of the said Jacob Dawson and John A. Hellman, subscribed his name to said instrument as an attesting witness; that the said Jacob Dawson, at the time he so executed the said instrument, was a citizen of the United States, an inhabitant of the county of Lancaster, of full age, of sound, disposing mind and memory, and not under any restraint.

H. S. JENNINGS.

Subscribed in my presence and sworn to before me this 13th day of September, 1869.

J. CADMAN,
Probate Judge.

[U. S. revenue stamp ($25.00) twenty-five dollars.]

129 STATE OF NEBRASKA, } ss:
Lancaster County, }

Recorded the preceding will and testament of Jacob Dawson, deceased, as a will of real and personal estate, together with the proofs taken in the court of the probate judge of said county relating to the said last will and testament, which record is hereby signed and certified by me pursuant to the provisions of the statute in such case made and provided this 13th day of September, 1869.

J. CADMAN,
Probate Judge.

Letters Testamentary.

STATE OF NEBRASKA, } ss:
Lancaster County, }

[U. S. rev. stamp, 5 cts.]

The people of the State of Nebraska to all to whom these presents shall come, Greeting:

Know ye that whereas Jacob Dawson, late of said county, on or about the 22nd day of July, A. D. 1869, as is said, after having duly made and published his last will and testament, having, at the time

of his death, property in which State, which may be lost, destroyed, or diminished in value if speedy care be not taken of the same, and inasmuch as it appears that Editha J. Dawson has been appointed executrix in and by said last will and testament to execute the same:

Now, to the end that the said property may be preserved for those who shall appear to have a legal right or interest therein, and that the said will may be executed according to the request of the said testator, we do hereby authorize the said Editha J. Dawson, as such executrix, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said testator at the
130 time of his decease in whosesoever hands or possession the same may be found in said State, and well and truly to perform and fulfill all such duties as may be enjoined upon her by the said will, so far as there shall be property, and the law charges her in general to do and perform all other acts which now are or hereafter may be required of her by law.

In testimony whereof I have hereunto set my hand and affixed the seal of the probate court of said county, at Lincoln, in said county, this thirteenth day of September, A. D. 1869.

[SEAL.] J. CADMAN,
Probate Judge.

Bond.

Know all men by these presents that we, Editha J. Dawson and M. Langdon and J. M. McKesson, of the county of Lancaster and State of Nebraska, are held and firmly bound unto John Cadman, a probate judge in and for said county, in the penal sum of ten thousand dollars, to be paid to the said John Cadman as such probate judge, or to his successor in office; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 13th day of September, A. D. 1869.

Whereas letters testamentary on the last will and testament of Jacob Dawson, late of said county, deceased, were on the 13th day of September, A. D. 1869, issued by the said probate judge to the above-bounden Editha J. Dawson:

Now, therefore, the condition of this obligation is such that if the said Editha J. Dawson, as the executrix of said last will and testament, shall make and return to the probate court of said
131 county, within three months from the date of her appointment, a true and perfect inventory of all the goods, chattels, rights, credits, and estate of the said deceased which shall come to her possession or knowledge, or to the possession of any other person for her, and shall administer according to law and to the will of said testator all his goods, chattels, rights, credits, and estate which shall at any time come to her possession or to the possession of any other person for her, and out of the same to pay and discharge all debts, legacies, and charges chargeable on the same or such dividends thereon as shall be ordered and decreed by the said probate court, and shall render a true and just account of her administration as

such executrix to the said probate court within one year and at any other time when required by such court, and shall perform all orders and decrees of the probate court by the said executrix to be performed in the premises, then this obligation to be void; otherwise to be and remain in full force and virtue.

EDITHA J. DAWSON. [SEAL.]
M. LANGDON. [SEAL.]
J. M. McKESSON. [SEAL.]

Sealed and delivered in presence of—
S. B. POUND.

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 13th day of September, A. D. 1869, personally appeared before me the above-named Editha J. Dawson and M. Langdon and J. M. McKesson, to me personally known to be the identical persons described in and who executed the foregoing bond, and acknowledged that they executed the same for the purposes therein mentioned.

[SEAL.] JOHN CADMAN,
Probate Judge in and for Said County.

I herewith approve the within bond this 13th day of September, A. D. 1869.

JOHN CADMAN,
Probate Judge.

132 *Order.*

Probate Court, Lancaster County.

In the Matter of the Last Will and Testament of JACOB DAWSON, Deceased.

Edith J. Dawson, executrix of the last will and testament of the said deceased, having applied to the probate court of said county for the proof and probate of said last will and testament, it is ordered that Monday, September 13th, 1869, at the office of the probate judge, in Lincoln, in said county, be the time and place of hearing the proof on said will, and that notice thereof be published three weeks successively in the State Journal, a newspaper published and printed in said county.

Dated August 9, 1869.

J. CADMAN,
Probate Judge.

STATE OF NEBRASKA, } ss:
Lancaster County, }

The people of the State of Nebraska to S. B. Galey and R. B. Tingley, Greeting:

This is to authorize you to appraise the real and personal estate of Jacob Dawson, late of said county, deceased, as far as the same

shall come to your sight and knowledge, each of you having first taken the oath hereto annexed, a certificate of which appraisal you are to return annexed to the inventory to be made of said real and personal estate, and in said inventory you are to set down in a column or columns opposite to each article or item appraised the value thereof.

In witness whereof I have hereunto set my hand and affixed the seal of the probate court of said county, at Lincoln, in said county, this third day of November, 1869.

S. B. POUND, [SEAL.]
Probate Judge.

133 STATE OF NEBRASKA, } ss:
Lancaster County, }

You and each of you do solemly swear that you will well and truly, without partiality or prejudice, value and appraise the real and personal estate of Jacob Dawson, late of said county, deceased, so far as the same shall come to your sight and knowledge, and that you will in all respects perform your duty as appraisers to the best of your skill and judgment.

S. B. GALEY.
R. R. TINGLEY.

Subscribed in my presence and sworn to before me this 9th day of November, 1869.

S. B. POUND, [SEAL.]
Probate Judge.

STATE OF NEBRASKA, } ss:
Lancaster County, }

We, the undersigned, having been appointed by the probate judge of said county to appraise the real and personal property of the estate of Jacob Dawson, late of said county, deceased, having been first duly sworn as required by law, as shown by the annexed warrant from the said probate judge, did on the 22nd and 23rd days of November, A. D. 1869, proceed to examine and appraise the said property of said deceased, a full and complete inventory and appraisement of the value thereof being annexed hereto as follows, to wit:

Real Property.

The east half of the northeast quarter (¼) of section number thirty-five (35), town. number ten (10), range No. six (6), containing 80 acres, appraised at $150 per acre	$12,000 00
The southeast quarter of the southeast quarter of section number thirty-five, town. number ten (10), range No. six (6), appraised at $50 per acre	2,000 00
134 The west half of the northwest quarter (4th) section thirty-four (34), town. No. ten (10), range number six, containing 80 acres, appraised at $100 per acre	8,000 00

The north half of the southeast quarter of section No. nineteen (19), town. No. ten (10), of range No. seven (7), containing 80 acres, appraised at $45 per acre	$3,650 00
The east half of the southwest quarter (4th) of section No. twenty-five (25), town. No. ten (10), of range six (6), containing 75 acres, appraised at $200 per acre	15,000 00
The northeast quarter of the southwest quarter of section number six (6), town. No. ten (10), of range No. seven (7), containing forty acres, appraised at $10 per acre	400 00
Lot number four (4) in the northwest quarter of section No. thirty-six (36), town. No. ten (10,) of range No. six (6), the same being a lot of five acres bought of the State of Nebraska at public sale of school lands, and the purchase-money not having been all paid, the interest therein of the said estate is hereby appraised at	400 00
Lots number three (3) and four (4), in block number fifty-four (54), in the town of Lincoln, Nebr., appraised at	5,000 00
Lot number five (5), in block number fifty-four (54), in the town of Lincoln, Nebr., and improvements thereon, appraised at	2,500 00
135 50 square feet, being part of lots Nos. —, in block number fifty-four, in the town of Lincoln, Nebr., appraised at	150 00
Total appraisement of real property	49,000 00

Personal Property.

Two span of horses appraised at	400 00
One colt, two years old, appraised at	75 00
One wagon	80 00
One mowing machine	40 00
One plow	20 00
Three cows	120 00
One hog	15 00
One cooking stove	30 00
One heating stove	20 00
One table	20 00
One safe	5 00
One set of chairs, common	4 00
One-half set cane-bottom chairs	6 00
Two bedsteads, $10	20 00
One bureau	3 00
One safe appraised at	15 00
One rocking chair	3 00
One secretary	10 00
Other household furniture appraised at	100 00
Total appraisement of personal property	$958 00

Certified by us this 23rd day of November, A. D. 1869.

R. R. TINGLEY,
S. B. GALEY,
Appraisers.

STATE OF NEBRASKA, } ss:
Lancaster County, }

136 Editha J. Dawson, executrix of the estate of Jacob Dawson, late of said county, deceased, being first duly sworn, says that the foregoing is a true and correct inventory of all the property, both real and personal, of said estate that has come to her knowledge, save and except a certain agreement or contract of H. W. Merrill to convey a tract of land to said Jacob Dawson, deceased, which *the* said conveyance the said Merrill has refused to make, and therefore is not included in said inventory; also an agreement or contract by C. C. Carter to convey a certain tract of land to said Jacob Dawson, deceased, which the said Carter has refused to do, and therefore it is not included in the said inventory; also a number of town lots in the town of Wyoming, Neb., the number of which cannot now be ascertained.

EDITHA J. DAWSON.

Subscribed in my presence and sworn to before me this 27th day of November, 1869.

S. B. POUND, [SEAL.]
Probate Judge.

Certificate.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

I, C. M. Parker, county judge in and for the county of Lancaster and State of Nebraska, do hereby certify the annexed is a true and perfect copy of the appraiser's commission, oath, and report and inventory of the executrix in the estate of Jacob Dawson, deceased, as the same at large appear of record at pages 52, 53, and 54 of Estate Book No. 1 of the records of said court now in my charge as county judge of the said county.

In testimony whereof I have hereunto set my hand and affixed the seal of my said court, at Lincoln, in said county, this 30th day of January, A. D. 1882.

C. M. PARKER, [SEAL.]
County Judge.

137 THE STATE OF NEBRASKA, } ss:
Lancaster County, }

I, Charles M. Parker, county judge in and for the county of Lancaster and State of Nebraska, do hereby certify the annexed and foregoing to be a true and perfect copy of all the records, proceedings, and doings in the probating of the will of Jacob Dawson, and is a copy of all that was done therein; that no claims of any kind were filed against said estate, and that Editha J. Dawson, as executrix,

did no other act than is shown herein, so far as the record in this court shows, and according to the records of said court now in my charge as county judge of the said county, and the same is a true copy of the record as spread upon probate record No. 1 at pages 50, 51, 52, 53, 54, 55, & 56, and in estate record at pages 52, 53, 54 of volume No. 1.

In testimony whereof I have hereunto set my hand and affixed the seal of my said court at Lincoln, in said county, this 19th day of September, 1882.

C. M. PARKER, [SEAL.]
County Judge.

Endorsed: Estate of J. Dawson. Certified copy of probate of will, bond, letters of administration, order to executrix, and returns thereon under said will.

Burr offered in evidence deed from William R. Dawson, Sarah H. Dawson, Melita C. Dawson, and Minnie S. Dawson to Highland H. Wheeler and Lionel C. Burr.

Ames objected to the deed being received in evidence, for the reason that there is no subscribing witness to the same. The deed was marked Exhibit E, and a copy thereof hereupon follows.

The following is a copy of Exhibit "E:"

138 *Deed. Dawson Heirs to Wheeler & Burr.*

This indenture, made this fifteenth day of September, A. D. 1879, between William R. Dawson, his wife, Sarah H. Dawson, Albert L. Dawson and his wife, —— Dawson; Evaline M. Dawson Kniceley and her husband, Alva A. Kniceley; Malita C. Dawson, unmarried, and Minnie S. Dawson, all heirs of the late Jacob Dawson, deceased, and all of the county of Lancaster and State of Nebraska, of the first part, and Hiland H. Wheeler and Lionel C. Burr, of the same place, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of seventy-five thousand ($75,000.00) dollars to them duly paid, the receipt whereof is hereby acknowledged, have sold, and by these presents do grant, convey, and confirm unto the said parties of the second part, their heirs and assigns forever, that certain piece, parcel, or tract of land situated in the county of Lancaster and State of Nebraska, more particularly known and described as follows, to wit: The west half of the southeast quarter of section nineteen, township ten north of range seven east, 6 P. M., containing eighty acres; the southeast quarter of the southeast quarter of section thirty-five, township ten north, range six east, 6 P. M., containing forty acres; the northwest quarter of the southwest quarter of section six, township ten north, range seven east, 6 P. M., containing forty acres; the east half of the northeast quarter of section thirty-five of township ten north, range six east, 6 P. M., containing eighty acres; the northwest quarter and southwest quarter of section twenty-four, township ten north of range six east, 6 P. M., containing eighty acres; and also the west half of the northeast quarter of section nine, township nine north,

range thirteen east, 6 P. M., county of Otoe and State of Nebraska, containing eighty acres, and also all the following described lots and
139 real estate situated in the city of Lincoln, in the said county of Lancaster, State of Nebraska, to wit: A part of lots nineteen, twenty, and twenty-one (19), (20), and (21), in block fifty-four (54), in the town (now city) of Lincoln aforesaid, more particularly described as follows: Commencing at a point in the east lines of lot twenty-one, in block fifty-four, twenty-four feet south of the northeast corner of said lot No. twenty-one; thence south along the west line of Tenth street in said city twenty-four feet; thence west and parallel to N street in said city 150 (one hundred and fifty) feet to an alley running north and south through block 54; thence north along the east line of said alley forty-eight feet and to the northwest corners of said lots 19 in said block 54; thence east along the north line of said lot 19 fifty feet and the northeast corner of said lot 19; thence south along the line between lots 19 and 20 in said block 54 twenty-four feet; thence east and parallel with said N street one hundred feet to Tenth street and to place of beginning, and also the west half of lot three; all of lots four, five and six; W. half of lot 3; all 4, 5, and 6 in said block No. 54 in said city of Lincoln and county of Lancaster, State of Nebraska; and also a piece of real estate twenty-two feet front on Eleventh street in said city of Lincoln, by fifty feet deep in block 41 (forty-one), and described as follows, to wit: Commencing at a point fifty feet south of the northwest corner of lot No. six in said block 41 and on the west line of said lots for a place of beginning; thence east fifty feet; thence south twenty-two feet; thence west fifty feet to the east line of said Eleventh street; thence north along east line of said Eleventh street to place of beginning,
140 together with all and singular the hereditaments and appurtenances thereto belonging or in any wise appertaining, and also all the estate, right, title, interest, lien, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the lands, with the appurtenances, and the said parties of the first part do hereby represent and say to and with the said parties of the second part, their heirs and assigns, that the said parties of the first part have an absolute and indefeasible estate in fee-simple of and in all *said* singular the above-granted premises with the appurtenances.

In testimony whereof the said parties of the first part have severally hereunto set their hands and seals the day and year first above written.

WILLIAM R. DAWSON. [SEAL.]
SARAH H. DAWSON. [SEAL.]
MELITA C. DAWSON. [SEAL.]
MINNIE S. DAWSON. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN MURFIN.

STATE OF NEBRASKA, } ss:
Cass County, }

On this third day of December, A. D. 1879, before me, the subscriber, a justice of the peace, duly elected and qualified for and residing in said county, personally appeared William R. Dawson, Sarah H. Dawson, Melita C. Dawson, and Minnie S. Dawson, to me known to be the identical persons described in and who executed foregoing conveyance as grantors, and acknowledged the said instrument to be their voluntary act and deed.

In testimony whereof I have hereunto set my hand at —, in said county, the day and year above written.

JOHN MURFIN,
Justice of the Peace.

STATE OF NEBRASKA, } ss:
Cass County, }

I, J. W. Jennings, county clerk in and for county and State
141 aforesaid, hereby certify that John Murfin, Esq., was a duly qualified and acting justice of the peace in and for Cass county, Nebraska, on the 3rd day of December, A. D. 1879.

In testimony whereof I have hereunto set my hand and official seal, at Plattsmouth, on this 19th day of January, 1882.

[Seal of Cass Co.]

J. W. JENNINGS,
County Cl'k.

Upon the back of said Exhibit E appear endorsements in words and figures following, to wit:

Deed. Wm. R. Dawson et al. to Hiland H. Wheeler and Lionel C. Burr.

THE STATE OF NEBRASKA, } ss:
Lancaster Coanty, }

Filed for record in the clerk's office of said county the 11 day of January, 1882, at 8 o'clock and 5 minutes a. m. Book No. 11, pages 255 to 257.

J. H. McCLAY,
County Clerk.

$1.75 p'd. J. N.

Burr offered in evidence the deed of Albert Dawson, Mahala J. Dawson, his wife; A. A. Knicely, and Evaleen Dawson Knicely to Highland H. Wheeler and Lionel C. Burr.

Ames objected to the reception of the deed in evidence, for the reason that the same is immaterial, and also that there is no subscribing witness to the instrument. The deed was marked "Exhibit F," and a copy thereof hereupon follows. The following is a copy of Exhibit F:

Deed. Dawson to Burr & Wheeler.

This indenture, made this fifteenth day of September, A. D. 1879, between Albert L. Dawson, his wife, Mahala J. Dawson; Evaline M. Dawson Knicely, and her husband, Alva A. Knicely, all heirs of the late Jacob Dawson, deceased, and all of the county of Lancaster and State of Nebraska, of the first part, and Hiland H. Wheeler and Lionel C. Burr, of the same place, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of seventy-five thousand ($75,000.00) dollars to them duly paid, the receipt whereof is hereby acknowledged, have sold,
142 and by these presents do grant, convey, and confirm unto the said parties of the second part, their heirs and assigns, forever, all that certain piece, parcel, or tract of land situated in the county of Lancaster and State of Nebraska, more particularly known and described as follows, to wit: The west half of the southeast quarter of section nineteen, township ten north, range seven east, 6 P. M., containing 80 acres; the southeast quarter of the southeast quarter of section thirty-five, township ten north, range six east, 6 P. M., containing forty acres; the northwest quarter of the southwest quarter of section six, township ten north, range seven east, 6 P. M., containing forty acres; the east half of the northeast quarter of section thirty-five, township ten north, range six east, 6 P. M., containing 80 acres; the northwest quarter and the southwest quarter of section twenty-four, township ten north, range six east, 6 P. M., containing 80 acres; and also the west half of the northeast quarter of section nine, of township nine north, range thirteen east, 6 P. M., county of Otoe and State of Nebraska, containing eighty acres; and also the following-described lots and real estate situated in the city of Lincoln, in said county of Lancaster and State of Nebraska, to wit: A part of lots nineteen, twenty, and twenty-one (19, 20, and 21), in block fifty-four (54), in the town, now city, of Lincoln aforesaid, more particularly described as follows: Commencing at a point in the east line of lot twenty-one, in block No. fifty-four, twenty-four feet south of the northeast corner of said lot No. twenty-one; thence south along the west line of Tenth street in said city twenty-four feet; thence west and parallel to N street in said city one hundred and fifty (150) [feet] to an alley running north and south through said block 54; thence north along the east line of said alley
143 forty-eight feet, and to the northwest corner of said lot 19 in said block 54; thence east along the north line of said lot 19 fifty feet and to the northeast corner of said lot 19; thence south along the line between lots 19 and 20 in said block 54 twenty-four feet; thence east and parallel with said N street one hundred feet to Tenth street and to the place of beginning, and also the west half lot three (3), all of lots four, five, and six (4, 5, & 6), west half lot 3, all 4, 5, & 6 in said block No. fifty-four, in said city of Lincoln, said county of Lancaster, State of Nebraska; and also a piece of real estate twenty-two feet front on Eleventh street in said city of Lincoln by fifty feet deep in block (41) forty-one, and described as follows, to wit: Commencing at a point fifty feet south of the north-

west corner of lot No. six in said block 41 and on the west line of said lots for a place of beginning; thence east fifty feet; thence south twenty-two feet; thence west fifty feet to east line of said Eleventh street; thence north along east line [of] said Eleventh street to place of beginning, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and also all the estate, right, title, interest, lien, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, with the appurtenances, and the said parties of the first part do hereby represent and say to and with the said parties of the second part, their heirs and assigns, that the said parties of the first part have an absolute and indefeasible estate in fee-simple of and in all and singular the above-granted premises with the appurtenances.

In testimony whereof the said parties of the first part have severally hereunto set their hands and seals the day and year first above written.

144

ALBERT DAWSON. [SEAL.]
MAHALA DAWSON. [SEAL.]
A. A. KNICELY. [SEAL.]
EVALEEN KNICELY. [SEAL.]

Signed, sealed, and delivered in presence of—
JAS. T. ZEDIKER.

Signed, sealed, and delivered in presence of—
M. L. EASTERDAY,
as to A. A. and Evaleen Knicely.

STATE OF NEBRASKA, } ss:
County of Franklin, }

Be it remembered that on this 6th day of February, A. D. 1880, before me, the undersigned, a notary public duly commissioned and qualified for and residing in said county and State, personally appeared Albert L. Dawson and Mahala J. Dawson (husband and wife), to me known to be the identical persons described in and who executed the foregoing instrument as grantors, and they severally acknowledged the said instrument to be their voluntary act and deed.

In testimony whereof I have hereunto set my hand and seal at my office in said county the day and year last above written.

JAS. F. ZEDIKER, [SEAL.]
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

Be it remembered that on this 25th day of February, A. D. 1880, before me, the undersigned, a notary public duly commissioned and qualified for and residing in said county and State, personally appeared A. A. Knicely and Evaleen Dawson Knicely, husband and wife, to me known to be the identical persons described in and who executed the foregoing instrument as grantors, and they severally

acknowledged the said instrument to be their voluntary act and deed.

In testimony whereof I have herewith set my hand and affixed my notarial seal at my office in said county the day and year last above written.

145 M. L. EASTERDAY, [NOTARIAL SEAL.]
Notary Public.

Upon the back of said exhibit appear endorsements in words and figures following, to wit:

Deed.

Albert L. Dawson *et al.* to Hiland H. Wheeler and Lionel C. Burr.

THE STATE OF NEBRASKA, } ss:
County of Lancaster, }

Filed for record in the clerk's office of said county the 11th day of Jan'y, 1882, at 8 o'clock and 5 minutes a. m., book No. 11, pages 252 to 4.

J. H. McCLAY,
County Clerk.

$1.75 p'd.

Burr offered in evidence deed of Hiland H. Wheeler and Lionel C. Burr and wife to E. Giles.

Ames objected to the reception of the deed as immaterial and not properly witnessed. The deed was marked "Exhibit G," and a copy thereof hereupon follows. The following is a copy of Exhibit G:

Deed. Wheeler & Burr to Ezekiel Giles.

This indenture, made this twenty-seventh day of April, A. D. 1880, between Hiland H. Wheeler and Lionel C. Burr and Aldana Burr, his wife, of the first part, and E. Giles, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of seventy-five thousand dollars ($75,000.00) to them duly paid, the receipt whereof is hereby acknowledged, have sold, and by these presents do grant, convey, and confirm unto the said parties of the second part, his heirs and assigns forever, all that certain piece, parcel, or tract of land situated in the county of Lancaster and State of Nebraska, more particularly known and described as follows, to wit: The west half of the southeast quarter of section nineteen, township ten north, range seven east, 6 P. M., containing 80 acres; the southeast quarter of the southeast quarter of section thirty-five (35), township ten (10) north, range six east,
146 6 P. M., containing forty acres; the northwest quarter of the southwest quarter of section six (6), township ten (10) north, range seven (7) east, 6 P. M., containing forty (40) acres; the east half of the northeast quarter of section thirty-five (35) of township ten (10) north of range six (6) east, 6 P. M., containing eighty (80) acres; the northwest quarter and the southwest quarter of section twenty-four (24), township ten (10) north, range six (6) east, 6 P. M., containing eighty (80) acres, and also the west half of the northeast

quarter of section nine (9), township nine (9) north, range thirteen east, 6 P. M., county of Otoe and State of Nebraska, containing eighty (80) acres. And also all the following-described lots and real estate, situated in the city of Lincoln, in the said county of Lancaster and State of Nebraska, to wit: A part of lots nineteen (19), twenty (20), and twenty-one (21), in block fifty-four (54), in the town, now city, of Lincon aforesaid, more particularly described as follows: Commencing at a point on the east line of lot twenty-one (21), in block number fifty-four (54), twenty-four feet south of the northeast corner of said lot number twenty-one (21); thence south along the west line of Tenth — in said city twenty-four (24) feet; thence west and parallel to "N" street in said city one hundred and fifty (150) feet to an alley running north and south through said block fifty-four (54); thence north along the east line of said alley forty-eight feet (48) and to the northwest corner of said lot nineteen (19) in said block fifty-four (54); thence east along the north line of said lot nineteen (19) fifty feet (50) and to the northeast corner of said lot nineteen (19); thence south along the line between lots nineteen (19) and twenty (20), in said block fifty-four (54), twenty-four (24) feet; thence east and parallel with said "N"
147 street 100 feet to Tenth street and to place of beginning; and also the west half of lot three (3), all of lots four (4), five (5), and six (6), west half [of] lot three (3), all [of lots] four (4), five (5), six (6), in said block number fifty-four (54), in said city of Lincoln, said county of Lancaster, State of Nebraska; and also a piece of real estate twenty-two (22) feet front on Eleventh street, in said city of Lincoln, by fifty (50) feet deep, in block forty-one (41), and described as follows, to wit: Commencing at a point fifty (50) feet south of the northwest corner of lot number six (6), in said block forty-one (41), and on the west line of said lots, for a place of beginning, thence east fifty (50) feet; thence south twenty-two (22) feet; thence west fifty (50) feet to the east line of said Eleventh street; thence north along east line of said Eleventh street to place of beginning; together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and also all the estate, right, title, interest, lien, claim, and demand whatever, as well in law as in equity, of the said parties of the first part of, in, and to the same, with the appurtenances; and the said parties of the first part do hereby represent and say to and with the said party of the second part, his heirs and assigns, that the said parties of the first part have an absolute and indefeasible estate in fee-simple of and in all and singular the above-granted premises with the appurtenances.

In testimony whereof the said parties of the first part have severally hereunto set their hands and seals the day and year first above written.

HILAND H. WHEELER. [SEAL.]
LIONEL C. BURR. [SEAL.]
ALDANA BURR. [SEAL.]

148 Signed, sealed, and delivered in presence of—
W. R. KELLEY.

STATE OF NEBRASKA, } ss:
Lancaster County, }

Be it remembered that on the 11th day of June, A. D. 1880, before me, the undersigned, a notary public, duly commissioned and qualified, for and residing in said county and State, personally appeared Hiland H. Wheeler and Lionel C. Burr and Aldana Burr (husband and wife), to me known to be the identical persons described in and who executed the foregoing instrument as grantors, and they severally acknowledged the said instrument to be their voluntary act and deed.

In testimony whereof I have hereunto set my hand and seal, at my office in said county, the day and year last above written.

W. R. KELLEY, [SEAL.]
Notary Public.

Upon the back of said Exhibit G appear endorsements in words and figures following, to wit:

Deed.

Hiland H. Wheeler and Lionel C. Burr *et al.* to E. Giles.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

Filed for record in the clerk's office of said county the 11th day of Jan'y, 1882, at 8 o'clock and 5 minutes a. m., Book No. 11, pages 257 to 259.

J. H. McCLAY,
County Clerk.

$1.75 p'd.

Burr offered in evidence two deeds—first, the certified copy of a deed from Albert L. Dawson and wife to Wm. A. J. Goodin, and the second of Wm. A. J. Goodin back to Albert Dawson.

Ames objected to both as immaterial and not properly witnessed, and the copy is not the best evidence. Copy withdrawn.

Burr as to Deed.

L. C. BURR sworn and testified:

I am one of the counsel for Ezekiel Giles in this suit. I do not know anything about where this original deed is of Albert
149 Dawson to Gooding. I never saw it; never had it in my possession, and neither had Ezekiel Giles. I do not know where it is now.

Burr offered the certified copy as above.

Ames objected [as] immaterial, not properly witnessed, and not the best evidence.

The papers were marked "Exhibit H and I," and the following are copies. The following is a copy of Exhibit H:

Deed A. L. Dawson to Goodin.

This indenture, made this sixth day of January, in the year one thousand eight hundred and eighty-two, between Albert L. Dawson and Mahala J. Dawson, wife of said Albert L. Dawson, heirs of Jacob Dawson, deceased, of the first part, and William A. J. Goodin, of Mills county, State of Iowa, of the second part, witnesseth: That the said party of the first part, in consideration of the sum of five thousand dollars to them duly paid, the receipt whereof is hereby acknowledged, have remised, released, and quit-claimed, and by these presents do, for themselves, their heirs, executors, and administrators, remise, release, and forever quit-claim, unto the said party of the second part, and to his heirs and assigns, forever, all dower right, their right, title, interest, estate, dower, right, claim and demand, both at law and in equity, of, in, and to all of the following real estate, lying and being in Lancaster county, State of Nebraska, to wit: The west half of the southeast quarter of section nineteen (19), and the northwest quarter of the southwest quarter of section six (6), both in township ten (10) N., range seven (7) E.; also the west half of the northwest quarter of section twenty-four (24), the southeast quarter of the southeast quarter of section thirty-five (35), and the east half of the northeast quarter of said section thirty-five (35), all in township ten (10) N., range six (6) E; also beginning at the north west quarter of lot nineteen (19), in block fifty-four (54), in the
150 city of Lincoln, Lancaster county, State of Nebraska, running thence east fifty feet; thence south on the east line of said lot fifty feet; thence west fifty feet; thence north fifty feet to place of beginning; also the west half of lot three (3), and all of lots four, five, and six (4, 5, and 6) in said block fifty-four; also all of lot six (6) in block forty-one (41); all of said lots in said blocks lying and being in the city of Lincoln, Lancaster county, Nebraska, according to the recorded plat of the town, now city, of Lincoln aforesaid; also the following, lying and being in the county of Otoe and State of Nebraska, to wit: The west half of the northeast quarter of section nine (9), in township nine (9) N., range thirteen (13) east, of the 6th principal meridian, together with all and singular the hereditaments and appurtenances thereunto belonging, to have and to hold the above-described premises unto the said William A. J. Goodin, his heirs and assigns, so that neither they, the said first party, nor any person in their name and behalf, shall or will hereafter claim or demand any right or title to the said premises, or any part thereof, but they, and every of them, shall by these presents be excluded and forever barred.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

ALBERT L. DAWSON.
MAHALA J. DAWSON.

Signed, sealed, and delivered in presence of—
JOHN MURFIN.

THE STATE OF NEBRASKA, } ss:
Otoe County, }

On this 6th day of January, A. D. 1882, before me, John Murfin, a notary public duly commissioned and qualified for and residing in said county, personally came Albert L. Dawson and Mahala
151 J. Dawson, to me known to be the identical persons described in and who executed the foregoing conveyance as grantors, and acknowledged the said instrument to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

JOHN MURFIN, [SEAL.]
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, J. H. McClay, county clerk of said county, hereby certify that the above and foregoing is a true and correct copy of the original now of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, this 7th day of October, A. D. 1882.

J. H. McCLAY, [SEAL.]
County Clerk.

Upon the back of said Exhibit H appear endorsements in words and figures following, to wit:

Quit-Claim Deed. Albert L. Dawson et ux. to William A. J. Goodin.

Filed for record January 9, 1882, at 2.25 p. m., and recorded in Book 11 of deeds at pages 249 & 250.

J. H. McCLAY, *Co. Cl'k.* [SEAL.]

The following is a copy of Exhibit I:

This indenture, made this thirteenth day of January, A. D. 1882, between William A. J. Goodin, an unmarried man, of Pacific City, Mills county, State of Iowa, party of the first part, and Albert L. Dawson, party of the second part, and of the county of Cass and State of Nebraska, heir of Jacob Dawson, deceased, witnesseth: That the party of the first part, in consideration of five thousand ($5,000) dollars, to him in hand paid, the receipt whereof is hereby acknowledged, has sold and by these presents doth grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns forever, all those certain tracts, pieces, and parcels
152 of land more particularly known and described as follows, viz:

All those certain tracts, pieces, or parcels of land situated in Lancaster county, State of Nebraska, as follows, viz: The west half of the southeast quarter of section nineteen (19), township ten (10) north, range seven (7) east, of the 6th P. M., containing 80 acres; and the southeast quarter of the southeast quarter of section thirty-five (35), township ten (10) —, range six (6) east, 6th P. M., containing 40 acres; the northwest quarter of the southwest quarter of section

six (6), township ten (10) north, range seven (7) east, 6th P. M., containing 40 acres; and the east half of the northeast quarter of section thirty-five (35), township ten (10) north, range six (6) east, 6th P. M., containing 80 acres; and the west half of the northwest quarter of section twenty-four (24), township ten (10) north, range six (6) east, 6th P. M., containing 80 acres; also the west half of the northeast quarter of section nine, township nine north, range (13) thirteen east, 6th P. M., lying and being in Otoe County, State [of] Nebraska, containing 80 acres; also the north fifty feet of lot number nineteen (19), of block (54) fifty-four, of the city of Lincoln, Lancaster county, Nebraska, according to the original survey and plat of the town, now city, of Lincoln aforesaid, being all that tract of land bounded and described as follows: Beginning at northwest corner of said lot nineteen, running thence east (50) fifty feet; thence south in the east line of said lot (50) fifty feet; thence west (50) fifty feet; thence north (50) fifty feet to place of beginning; also the west half of lot three (3); also of lots four (4), five (5), and six (6), in said block fifty-four (54) in said city of Lincoln; also all of lot six (6) in block forty-one (41) in said city of Lincoln, according to the original survey and plat of the town, now city, of Lincoln aforesaid, together with all and singular the tenements and hereditaments and
153 appurtenances thereto belonging or in any wise appertaining, and also all the estates, rights, title, interest, claim, and demand, as well in law as in equity, which the said party of the first part now has or ever has had in and to the and each of the above parcels of land with the appurtenances thereto belonging.

In witness whereof the said party of the first part has hereunto set his hand and seal this 13th day of January, A. D. 1882.

WILLIAM A. J. GOODIN. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN MURFIN.

STATE OF NEBRASKA, } ss:
Cass County, }

On this thirteenth day of January, A. D. 1882, before me, John Murfin, a notary public, duly commissioned, qualified for, and residing in said county, personally came William A. J. Goodin, an unmarried man, to me known to be the identical person described in and whose name is affixed to the foregoing instrument as grantor, and he acknowledged that he executed the same and the instrument to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

JOHN MURFIN, [NOTARIAL SEAL.]
Notary Public.

Upon the back of Exhibit I appear endorsements in words and figures following, to wit:

Deed. W. A. J. Goodin to A. L. Dauson.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

Filed — record in the clerk's office of said county the 14th day of Jan'y, 1882, at 4 o'clock and — minutes p. m., Book No. 11, pages 282 and '3.

J. H. McCLAY,
County Clerk.

1.25 p'd.

Burr offerred in evidence quit-claim deed of Josiah D. Beacon to S. G. Owen and R. H. Oakley, of the date October 29th, 1880. The paper was admitted in evidence, marked Exhibit J., and the
154 following is a copy thereof. The following is a copy of Exhibit J.:

Deed. Bacon to Owen & Oakley.

This indenture, made this 29th day of October, in the year of — one thousand eight hundred and eighty, between Josiah D. Bacon, unmarried, of Lincoln, county of Lancaster and State of Nebraska, of the first part, and Samuel G. Owen and R. H. Oakley, of Lincoln, Nebraska, witnesseth: That the said party of the first part, in consideration of the sum of seven thousand ($7,000) dollars to him duly paid, the receipt whereof is hereby acknowledged, has remised, released, and quit-claimed, and by these presents does, for himself, his heirs, executors, and administrators, remise, release, and forever quit-claim, unto said parties of the second part and their heirs and assigns forever all his right, title, interest, estate, and claim and demand, both at law and in equity, of, in, and to nineteen feet and five and one-half inches off of lots five and six (5 & 6), in block number fifty-four (54), in the city of Lincoln, Nebraska, according to the recorded plat described more fully as eighteen feet and nine and one-half off of the west side of lot number five (5), and eight inches off the east side of lot number six (6), in said block, commencing at the center of the west wall of the building belonging to Mrs. Martha Alexander, and running due west nineteen feet and five and one-half inches to or near the center of the wall of the building now owned by Samuel W. Little next west.

This deed is intended to quit-claim all the right, title, and interest derived from deed from W. W. Wilson, dated April 10th, 1875, together with all and singular the hereditaments and appurtenances thereunto belonging; to have and to hold the above-described premises unto the said Samuel G. Owen and R. H. Oakley, their
155 heirs and assigns, so that neither I, the said Josiah D. Bacon, or any person in my name and behalf, shall or will hereafter claim or demand any right or title to the said premises, or any part thereof, but they and every one of them shall, by these presents, be excluded and forever barred.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year above written.

JOSIAH D. BACON.

Signed, sealed, and delivered in presence of—
J. F. LANSIN.

Upon the back of said exhibit appear endorsements in words and figures following, to wit:

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 29th day of October, A. D. 1880, before me, the subscriber, a notary public, duly appointed, commissioned, and qualified for and residing in said county, personally appeared Josiah D. Bacon (unmarried), to me known to be the identical person described in and whose name is affixed to the foregoing conveyance as grantor, and he acknowledged the said instrument to be his voluntary act and deed.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at Lincoln, in said county, the day and year last above written.

J. F. LANSING, [SEAL.]
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, J. H. McClay, county clerk of said county, hereby certify that the above and foregoing is a true and correct copy of the original now of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said county this 7th day of October, A. D. 1882.

J. H. McCLAY,
County Clerk.

156 *Quit-Claim Deed. Josiah D. Bacon to S. G. Owen and R. H. Oakley.*

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

Filed for record Oct. 30, 1880, at 11:30 minutes a. m., and recorded in Book 2 of deeds on page 547.

L. F. CROPSEY,
County Clerk.

Burr offered in evidence certified copy of deed from Franklyn T. Sherwin and wife to A. P. S. Stuart, deed dated 14th day of October, 1881. The deed was admitted in evidence, marked Exhibit K, and the following is a copy thereof. The following is a copy of Exhibit K:

Deed. Sherwin to Stuart.

Know all men by these present that we, Franklyn T. Sherwin and Mary E. Sherwin, his wife, in consideration of seven thousand and six hundred dollars in hand paid by A. P. S. Stuart, of Lincoln, Nebraska, have hereby bargained, sold, and quit-claimed, and by these presents do bargain, sell, and quit-claim, unto said A. P. S. Stuart and his heirs and assigns the following-described real estate situate in the county of Lancaster and State of Nebraska, to wit: The west half of lots three and nine and thirty-seven one-hundreths ([3 and] 9 and 37 hundredths) feet off the east side of lot four, all in block fifty-four, in all twenty-one and eighty-seven one-hundredths feet (21 and 87 hundredths feet) according [to] the original survey of the town of Lincoln. This conveyance is made subject to taxes of 1881, which grantee assumes to pay with all and singular the hereditaments and appurtenances thereunto belonging or appertaining.

In witness whereof we have hereunto set our hand and seal this fourteenth day of October, A. D. 1881.

FRANKLYN T. SHERWIN.
MARY F. SHERWIN.

In presence of—
J. P. LANTZ.

157 STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 14th day of October, A. D. 1881, before me, a notary public in and for said county, personally came Franklyn F. Sherwin and Mary F. Sherwin, personally to me known to be the identical persons whose names are affixed to the above deeds as grantors, and acknowledged the instrument to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

J. P. LANTS, [SEAL.]
Notary Public.

Upon the back of said Exhibit K appear endorsements in words and figures following, to wit:

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, J. H. McClay, county clerk of said county, hereby certify that the above and foregoing is a true and correct copy of the original now of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said county this 7th day of October, A. D. 1882.

J. H. McCLAY,
County Clerk.

Quit-Claim Deed. F. T. Sherwin and Wife to A. P. S. Stuart.

Filed for record Oct. 17th, 1881, at 8:15 a. m., and recorded in Book 8, page 605.
[Seal of Lancaster County.]

L. F. CROPSEY, *Co. Clerk.*

Burr offered in evidence lease from F. T. Sherwin to A. M. Wait of the date November 1st, 1879, and November 1st, 1882, certified copy.

Ames objected [as] immaterial and not the best evidence.

The lease was marked "Exhibit L" and the following is a copy thereof. The following is a copy of Exhibit L:

Lease. Sherwin to Wait.

This indenture, made this first day of November, 1879, between F. T. Sherwin of Lincoln, Lancaster county, Nebraska, party of the first part, and A. H. Wait, of Lincoln, Lancaster county, Nebraska, party of the second part, witnesseth:
158 That the said party of the first part, in consideration of the covenants of the said party of the second part hereinafter set forth, do by these presents lease to the said party of the second part the following-described property, to wit: My one store-room and cellar located in two-story brick building, said building situate in block fifty-four, on parts of lots 3 and 4, south side of the post-office square, Lincoln, Lancaster county, Nebraska, for three (3) years from the first day of November, 1879, to the first day of November, 1882; to have and to hold the same to the said party of the second part from the first day of November, 1879, to the first day of November, 1882. And the said party of the second part, in consideration of the leasing the premises above set forth, covenants and agrees with the party of the first part to pay the said party of the first part as rent for the same the sum of thirty-four hundred and twenty dollars (3,420), payable as follows, to wit: Ninety-five ($95) dollars per month in advance for thirty-six months, beginning with the first day of November, 1879, and ending with the first day of October, 1882. The said F. T. Sherwin further agrees that, in case said room and cellar is damaged by fire, *that* the said F. T. Sherwin will release the said A. H. Wait from paying any and all rent until the said room and cellar is put in as good condition as it was at the time it was first occupied by the said A. H. Wait. The said party of the second part further covenants with the said party of the first part that at the expiration of the time mentioned in this lease peaceable possession of the said premises shall be given to the said party of the first part in as good condition as they now are, the usual wear, inevitable accidents, and loss by fire excepted; and that upon the non-payment of the whole or any portion of the said
159 rent at the time when the same is above promised to be paid the said party of the first part may, at his election, either distrain for said rent due or declare this lease at an end, and recover possession as if the same was held by forcible detainer, the said party of the second part hereby waiving any notice of said election, or any demand for the possession of said premises.

And it is further covenanted and agreed between the parties aforesaid that the said F. T. Sherwin agrees to give the said A. H. Wait the privilege of leasing the same room and cellar mentioned above for the term of two years more from the first day of November, 1882,

to the first day of November, 1884, at same rates as paid for November 1st, 1879, to November 1st, 1882. The covenants herein shall extend to and be binding upon the heirs, executors, and administrators of the parties to this lease.

Witness the hands and seals of the parties aforesaid.

F. T. SHERWIN. [SEAL.]
A. H. WAIT. [SEAL.]

Witness:
A. W. OCOBOCK.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 1st day of December, A. D. 1879, before me, a notary public, duly commissioned and qualified for and residing in said county, personally came F. T. Sherwin, the said lessor, and A. H. Wait, the said lessee, to me known to be the identical persons whose names are affixed to the foregoing conveyance as lessor and lessee, and acknowledged the said instrument to be their voluntary act and deed.

Witness my hand and seal the day and year last above written.

A. W. OCOBOCK, [SEAL.]
Notary Public.

160 STATE OF NEBRASKA, } ss:
Lancaster County, }

I, J. H. McClay, county clerk of said county, hereby certify that the above and foregoing is a true and correct copy of the original now of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said county this 7th day of October, A. D. 1882.

[Seal Lan. Co.]

J. H. McCLAY,
County Clerk.

Upon the back of said Exhibit L appear endorsements in words and figures following, to wit: Lease. From F. T. Sherwin to A. H. Wait. The State of Nebraska, ss. Received for record at 2 o'clock p. m. Dec. 1, A. D. 1879, and recorded in Book C of misc. records, page 67.

Marriage License, &c.—Editha J. Dawson and H. M. Pickering.

Burr offered marriage license and marriage certificate of Editha J. Dawson and H. M. Pickering, certified copy of the same, from the county judge of Cass county, Nebraska.

Ames objected [as] incompetent, immaterial, and not the best evidence.

Paper marked "M," and the following is a copy of the same:

Marriage License.

THE STATE OF NEBRASKA, } ss:
Cass County, }

The State of Nebraska to any person authorized to solemnize marriages, Greeting:

You are hereby authorized to join in the holy bonds of matrimony, and to celebrate within said county the rites and ceremonies of marriage between Mr. H. M. Pickering and Mrs. Edith J. Dawson. The father's name of the said H. M. Pickering is ———, and the maiden name of his mother is ———, and the father's name of said ——— is ———, and the maiden name of her mother is ———.

161 The said H. M. Pickering resides in the county of Cass and State of Nebraska, is aged fifty years, was born in the State of Ohio, and is a white person. The said Edith J. Dawson resides in the county of Cass and State of Nebraska, is aged fifty years, was born in the State of Ohio, and is also a white person. And these presents shall be your good and sufficient warrant, and you are required to return this license to me within three months from the celebration of such marriage, with a certificate of the same appended thereto signed by you under the penalty of five hundred dollars.

In testimony whereof I have hereunto set my hand and affixed the seal of the county court of said county of Cass this 12th day of December, A. D. 1879.

A. N. SULLIVAN, [SEAL.]
County Judge.

Marriage Certificate.

THE STATE OF NEBRASKA, } ss:
Cass County, }

Be it remembered that at residence in said county of Cass, on the 14th day of December, A. D. 1879, Mr. H. M. Pickering and Mrs. Edith Dawson, named in the foregoing license, were legally united in marriage by me in the presence of Lee Applegate, residing in the county of Cass and State of Nebraska, and Wm. Dawson, residing in the county of Cass and State of Nebraska.

Witness my hand this 14th day of December, 1879.

T. L. AUSTIN,
Minister of the Gospel.

STATE OF NEBRASKA, } ss:
Cass County, }

I, A. A. Laverty, county judge in and for Cass county, Nebraska, do hereby certify the within to be a true and correct and literal copy of page 254 of marriage record "D" of said county.

162 In witness whereof I have hereunto set my hand and official signature and affixed the seal of the county court of Cass county this 14th day of March, 1882.

A. A. LAVERTY, [SEAL.]
County Judge.

Endorsed: Marriage license—H. M. Pickering and Editha J. Dawson. Issued 12th December, 1879; returned 14th December, 1879.

Burr offered in evidence *of* marriage certificate of Alva A. Knicely and Eva Dawson.

Ames objected [as] incompetent, immaterial, and not the best evidence.

The paper was marked "Exhibit N," and the following is a copy of the same:

Marriage License, &c. Knicely and Dawson.

Application for license for marriage.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

Mr. Alvin A. Knicely, aged 25 years, a white person, born at Ohio, a resident of Lancaster county, Nebraska, son of Mr. James Knicely and Mrs. Rebecca Knicely, whose maiden name was Landra, and Miss Eva Dawson, aged 18 years, a white person, born at Nebraska, a resident of Lancaster county, Nebraska, daughter of Mr. Jacob Dawson and Mrs. Edith J. Dawson, whose maiden name was Ross, pray the issuance of license for marriage. They are each sole and competent to enter into contract of marriage.

ALVA KNICELY.

Subscribed and sworn to before me; filed and recorded this sixth day of February, A. D. 18—.

J. R. WEBSTER,
County Judge.

Marriage License.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

The State of Nebraska to any person authorized to solemnize marriage, Greeting:

You are hereby authorized within said county to join in
163 the contract of marriage Mr. Alva A. Knicely, a white person, aged 25 years, a resident of Lancaster county, Nebraska, born at Ohio, son of Mr. James Knicely and Mrs. Rebecca Knicely, whose maiden name was Landra, and Miss Eva Dawson, a white person, aged 18 years, born at Nebraska, daughter of Mr. Jacob Dawson and Mrs. Edith J. Dawson, whose maiden name was Ross, and these presents shall be your sufficient warrant for so doing. And of your doing herein make return to me within three months from the celebration of such marriage, with certificate of your doings annexed; and of this fail not, under penalty in such case made and provided.

In testimony whereof I have hereunto set my hand and affixed

the seal of the county court of said county of Lancaster this sixth day of February, A. D. 1879.

J. R. WEBSTER, [SEAL.]
County Judge.

Certificate of Marriage.

THE STATE OF NEBRASKA, }
Lancaster County, } ss:

I, Lewis Gregory, duly authorized minister of the gospel and pastor of Congregational church, do hereby certify that at Lincoln, in said county of Lancaster, and on the 6th day of February, A. D. 1879, in the presence of William Dawson, residing in Lancaster county, Nebraska, and Hattie Dawson, residing in Lancaster county, Nebraska, as witnesses, I solemnized the contract of marriage between Mr. Alva A. Knicely and Miss Eva Dawson, named in the foregoing license, as thereby, by virtue of my authority as a minister of the gospel and the law in such case made and provided, I am authorized to do.

Witness my hand this sixth day of February, 1879.

LEWIS GREGORY.

Returned and recorded this — day of February, 1879.

J. R. WEBSTER,
County Judge.

164 *Certificate.*

THE STATE OF NEBRASKA, }
Lancaster County, } ss:

I, C. M. Parker, county judge in and for the county of Lancaster and State of Nebraska, do hereby certify the annexed and foregoing is a true and perfect copy of the application for license and of the marriage license and of the certificate of marriage of Alva A. Knicely and Eva Dawson, as the same at large appear of record at page 113 of marriage record No. 4 of the records of said court, now in my charge as county judge of said county.

In testimony whereof I have hereunto set my hand and affixed the seal of my said court, at Lincoln, in said county, this 17th day of September, A. D. 1882.

C. M. PARKER, [SEAL.]
County Judge.

Endorsed: Marriage license Alva Knicely and Eva Dawson.

Burr offered in evidence certified copy of petition No. 196, F, Ezekiel Giles *vs.* S. G. Owen *et al.*

Ames objected [as] immaterial, irrelevant, hearsay, and not the best evidence.

The paper was marked Exhibit O, and the following is a copy of the same:

Petition in 196, *F.*

In the United States Circuit Court, District of Nebraska.

EZEKIEL GILES
vs.
SAMUEL G. OWEN, R. H. OAKLEY (first name unknown), R. S. GRIMES (first name unknown), and WILLIAM J. TURNER.

Ezekiel Giles, plaintiff, complains of Samuel G. Owen, R. H. Oakley (first name unknown), R. S. Grimes (first name unknown), and William J. Turner, defendants, and says:

1. The plaintiff is a resident of the State of Iowa and the
165 said defendants are residents in and citizens of the State of Nebraska.

2. On the 10th day of June, 1869, and thence to his death, Jacob Dawson was seized and possessed of divers real and personal estates of great value, and had a wife named Edith J. and six children, who were on said day minors, and some very young, and all without property whatever, his said wife being seized and possessed in her own right of real and personal estate of the value of $10,000 and over.

3. On said day the said Jacob made his last will and testament, which contained the following sole bequest:

After all my lawful debts are paid and discharged the residue of my estate, real and personal, I give and bequeath and dispose of as follows, to wit: To my beloved wife, Edith J. Dawson, I give and bequeath all of my estate, real and personal, of which I may die seized, the same to remain and be hers, with full power, right, and authority to dipose of the same as to her shall seem meet and proper, as long as she shall remain my widow, upon the express condition, however, that if she should marry again then it is to be my will that all of the estate herein bequeathed, or whatever may remain, should go to my surviving children, share and share alike; and in case any of my children should have deceased leaving issue then the issue so left to receive the share to which said child would be entitled. I likewise make, constitute, and appoint my said wife, Edith J., to be executrix of this my last will and testament.

4. On the 22nd day of June, 1869, the said Jacob died in Lancaster county, in this district, leaving him surviving his said wife and six children; the said will was duly proved and admitted to probate in the proper court of said county, and letters testamentary thereon were issued out of said court to the said Edith J.,
166 who took upon herself the execution of the said trust. The personal property whereof the said Jacob died possessed was duly inventoried and appraised at $958, and among the real estate whereof at his death the said Jacob was seized was that certain piece or parcel of land known and described as follows: Nineteen feet and five and one-half inches off of lots five and six, in block number fifty-four, in the city of Lincoln, Lancaster county, Nebraska, according to the original survey and recorded plat of said town, now city, of Lincoln, described more fully as eighteen feet and nine and

one-half inches off of the west side of lot number five and eight inches off the east side of lot number 6, in said block, commencing at the center of the west wall of the building possessed by Mrs. Martha Alexander February 18th, 1878, and running due west nineteen feet and five and one-half inches to or near the center of the wall of the building possessed by Samuel W. Little February 18, 1878, next west, which parcel of land is of the value of $5,000 and over.

5. On the 27th day of April, 1870, the said Edith J., by her certain deed of conveyance dated on said day and duly executed and acknowledged, conveyed the premises to one Cody, and by divers mesne conveyances from said Cody the said defendants, Owen and Oakley, claim and pretend that they are seized in fee of said premises, and they are now in possession thereof by the said defendants, Crimes and Turner, as their tenants.

6. On or about the 15th day of November, 1879, the said Edith J. intermarried with one Pickering.

7. One of the said children of the said Jacob has died intestate without issue, and the survivors being in indigent circumstances have joined in a conveyance of the said premises bearing
167 date on the 15th day of September, 1879, and duly executed and acknowledged, and whereby they conveyed the same in fee to one Burr and one Wheeler, who, by their deed dated April 27th, 1880, have conveyed the same to said plaintiff, and by reason of the premises the said plaintiff has become and is entitled to the immediate possession thereof, and the defendants, under the alleged title derived to them as aforesaid, unlawfully keeps the said plaintiff out of the possession thereof.

8. The said defendants have been in possession of said premises since the 29th day of October, 1880, by reason whereof the said plaintiff has sustained damages to the amount of $2,000.

Wherefore the said plaintiff prays judgment against the said defendants for the recovery of the possession of the said premises and $2,000, his damages so as aforesaid sustained.

L. C. BURR,
For Plaintiff.

H. H. WHEELER, J. M. WOOLWORTH,
Counsel for Pl'ff.

DISTRICT OF NEBRASKA, *ss:*

I, Lionel C. Burr, being duly sworn, say that I am one of the attorneys for the plaintiff in the above-entitled cause; that I have read the foregoing petition and know the contents thereof and facts stated therein are true, and that the plaintiff in said cause is a non-resident.

LIONEL C. BURR.

Subscribed in my presence and sworn to before me this 27th day of January, 1882.

F. E. McCRARY,
Deputy Clerk.

UNITED STATES OF AMERICA, } ss:
District of Nebraska. }

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the
168 annexed copy of petition in the case of Giles *vs.* Owen *et al.* with the original on file in this office, and that the same is a correct transcript thereof and of the whole of said original.

In testimony whereof I have caused the seal of said court to be hereto affixed at the city of Omaha, in said district, this 19th day of September, 1882.

[Seal U. S. Circuit Court.]

ELMER D. FRANK, *Clerk.*

Endorsed: No. 196, F. Ezekiel Giles *vs.* Samuel G. Owen *et al.* Petition. Filed Jan. 27, 1882, at 3 o'clock in the afternoon. Elmer D. Frank, clerk. J. M. Woolworth, of counsel for plaintiff.

Burr offered in evidence the plea in abatement in No. 196, F, filed by the defendants, S. G. Owen and others.

Ames objected [as] immaterial and irrelevant.

The paper was marked Exhibit "P," and the following is a copy:

Plea in Abatement No. 196, *F.*

In the United States Circuit Court of the Eighth Circuit in and for the District of Nebraska. At Law.

EZEKIEL GILES, Plaintiff,
against
SAMUEL G. OWEN, ROLLAND H. OAKLEY, —— TURNER, Defendants.

Plea in abatement to the jurisdiction.

The said defendants, for the sole purpose of objecting to the jurisdiction of this court, reserving to themselves, and each of them separately, the right to answer as to the merits of the cause of action in the said plaintiff's petition set forth, come now and defend the wrong and injury alleged against them by the said plaintiff, and say that the court here ought not to take cognizance of or sustain the action of the plaintiff, because these defendants aver that the plaintiff claims title to the property in his said petition described under and through a pretended deed of quit-claim without covenants of warranty or title, or any other covenants whatever, purport-
169 ing to be made on the — day of April, 1880, by one Lionel C. Burr and one Highland H. Wheeler, citizens of the county of Lancaster, State of Nebraska; and also under and through a certain other pretended deed of quit-claim without covenants of warranty or title, or any other covenants whatsoever, purporting to be made on the 27th day of January, 1882, by one Albert Dawson, who is a citizen of Cass county, State of Nebraska, which said deeds of quit-claim purported to convey from the said Lionel C. Burr and Highland H. Wheeler, jointly, and the said Albert L. Dawson unto

the plaintiff, his heirs and assigns forever, the said tract or parcel of land, possession of which plaintiff seeks to recover in this action, together with other real estate on said pretended deeds of quit-claim described.

These defendants further aver that said pretended deeds of quit-claim, and each of them, were made without any value or consideration being paid therefor by the said plaintiff, and were made for the sole and exclusive purpose of giving jurisdiction to this court to try the title and determine this controversy, to which the said plaintiff is only a nominal or colorable party; that in truth and in fact the said deeds of quit-claims, made and executed as it aforesaid appears, nor neither of them, were ever delivered to the plaintiff or accepted by him, and the said plaintiff has not, or ever had, any interest, either legal or equitable, in the real estate described in his said petition, nor any interest in the controversy here sought to be instituted; but, on the contrary, this action is prosecuted for the exclusive benefit of the said Burr and Wheeler, and the heirs of the said Jacob Dawson, deceased, who, with these defendants, are all citizens of the State of Nebraska as aforesaid.

170 These defendants, further pleading to the jurisdiction of the court here, allege that the heirs of Jacob Dawson, deceased, entered into a conspiracy with one Lionel C. Burr, Highland H. Wheeler, and the plaintiff herein prior to the commencement of this action, the object and sole purpose of which conspiracy was to bring this controversy in the court here and to prosecute this action for the sole and exclusive benefit and advantage of the said heirs and the said Burr and Wheeler, citizens of the State of Nebraska; that to cover the fraud they, the said conspirators, deceitfully intended to commit against the law and insidiously practice upon the jurisdiction of this court, and the better to elude detection therein the heirs then living of the said Jacob Dawson, deceased, on or about the 15th day of September, 1879, and prior to the intermarriage of their mother, Edith J., with one Pickering, for the pretended consideration of $75,000 *dollars*, but in truth and in fact for no consideration whatever, except to carry out the conspiracy aforesaid, made and executed a pretended deed of quit-claim without covenants of warranty or title or other covenants whatsoever, which pretended deed of quit-claim purported to convey from the said Dawson heirs to the said Burr and Wheeler all their right, title, and interest in and to the parcel of land described in said plaintiff's petition, together with other real estate in said deed described; that afterwards the said Burr and Wheeler, in pursuance of the fraudulent conspiracy aforesaid, made and executed a pretended deed of quit-claim without covenants of warranty or title or other covenants whatever for the pretended consideration of $75,000, but in truth and in fact for no consideration whatever, except to carry out the conspiracy aforesaid, which pretended deed of quit-claim pur-

171 ported to convey to the said plaintiff from the said Burr and Wheeler all the right, title, and interest in and to the real estate therein described, including the tract of land mentioned in

said plaintiff's petition, and to recover the possession of which this action is prosecuted.

That afterwards, to heal the wound injudiciously inflicted upon the said conspiracy and to mend the broken chain of title in the said pretended deeds of quit-claim, which had—improvidently severed by one of the conspirators aforesaid, and for the pretended consideration of five thousand dollars, but in truth and in fact for no consideration whatsoever, one certain Albert L. Dawson, one of the heirs to the said Jacob Dawson, deceased, who, before that time, had joined with others to the heirs of said Jacob Dawson, deceased, in the pretended deed of quit-claim, made as aforesaid to the said Burr and Wheeler, did on or about the 11th day of January, A. D. 1882, make and execute a pretended deed of quit-claim without covenants of warranty or title or any other covenants whatsoever, which deed of quit-claim, though never delivered to the said plaintiff or accepted by him, purported to convey from the said Albert L. Dawson to the said plaintiff, his heirs and assigns forever, the real estate described in plaintiff's petition and other real estate, being the same property pretended to have been conveyed by the said Dawson heirs, the said Albert L. therein joining to the said Burr and Wheeler; that to prevent any miscarriage of the conspiracy aforesaid and avoid further impediments to its natural progress all of said pretended deeds of quit-claim were on the — day of January, A. D. 1882, filed for record in the office of the county clerk and *ex-officio* recorder of deeds in the county of Lancaster, State of Nebraska; that to further accomplish the purpose of said conspiracy and the better to secure

172 the said Burr and Wheeler and the said Dawson heirs in the absolute control of said property and the whole of the proceeds to be derived to the said Burr and Wheeler and the said Dawson heirs arising from the sale and disposition of the real estate theretofore pretended to have been conveyed to the said plaintiff, the said plaintiff and his wife joining therein, made, executed, and delivered to the said Burr, as these defendants are informed and believe, a full power of attorney, thereby giving and granting to the said Lionel C. Burr full power and authority irrevocably for his own use and benefit and for the use and benefit of the said Wheeler and the said Dawson heirs to sell, dispose of, and convey any and all of the real estate which said pretended deeds of quit-claim aforesaid purported to convey to the said plaintiff, with the further power, authority, and right to convert and save, to the sole and exclusive use and benefit of the said Burr and Wheeler and the said Dawson heirs, all the proceeds, money, and value arising from the sale or disposition of all of the real estate aforesaid; that the said Burr, before and since the commencement of this action, has claimed to act and has acted as the attorney-in-fact of the said plaintiff and plaintiff's wife, and, as such attorney-in-fact, has made and executed, and has promised to make and execute, deeds of conveyance of said real estate, and has offered for sale, and has tried to sell and dispose of, the property described in plaintiff's petition for his own and the said Wheeler and the said Dawson heirs' use and benefit.

That further to accomplish the object and end of such conspiracy aforesaid the said Burr and Wheeler commenced this action herein [in] the name of the said plaintiff for their benefit and the benefit of the said Dawson heirs, and, though pretending to be only
173 the attorney of record of the said plaintiff, they in fact and the said Dawson heirs are the real parties in interest in this controversy; that all the bonds and undertakings required by law and the rules of this court in the prosecution hereof are furnished by them, and all the expenses incurred for hiring counsel and service of marshal and clerk and deputy marshals and clerks in the prosecution hereof are paid by them; that the plaintiff is in indigent circumstances, is the father-in-law of the said Lionel C. Burr, and is only a nominal party to this action.

These defendants further say, under advice of counsel, that the cause of action, if any accrued to the said plaintiff by reason of the pretended deeds of quit-claim aforesaid, accrued to him in the courts of the State of Nebraska and not within the jurisdiction of this court, and this they are ready to verify.

T. M. MARQUETTE,
GALEY AND ABBOTT,
HARWOOD AND AMES,
Att'ys for Def'ts.

STATE OF NEBRASKA, }
County of Lancaster, } *ss:*

Samuel G. Owen, — of the defendants above named, being duly sworn says that the above plea is true in substance and matter of fact as he verily believes.

SAMUEL G. OWEN.

Subscribed in my presence and sworn to before me this 6th day of February, 1882.

ELMER D. FRANK, *Clerk.*

UNITED STATES OF AMERICA, }
District of Nebraska, } *ss:*

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the
174 annexed copy of plea in abatement in case of Ezekiel Giles against Samuel G. Owen *et al.*, No. 196, with the original on file in this office, and that the same is a correct transcript thereof and of the whole of said original.

In testimony whereof I have caused the seal of said court to be hereto affixed, at the city of Omaha, in said district, this 4th day of May, 1882.

[Seal U. S. Circuit Court.]

ELMER D. FRANK, *Clerk.*

Endorsed: No. 196, F. In the United States circuit court of the 8th circuit, in the district of Nebraska. Ezekiel Giles *vs.* Samuel G. Owen *et al.* Plea in abatement. Filed March 6, 1882. Elmer D. Frank, clerk.

Burr offered certified copy of the stipulation in Giles *vs.* Owen *et al.*, and also in this equity case.

Ames objected [as] immaterial and irrelevant.

The paper was marked Exhibit Q, and the following is a copy of the same:

Stipulation.

In the United States Circuit Court, District of Nebraska.

Five cases of—

EZEKIEL GILES
vs.
S. W. LITTLE *et al.*, S. G. OWEN *et al.*, MARTHA ALEXANDER *et al.*, A. P. S. STEWART *et al.*

And a suit in equity of—

S. W. LITTLE *et al. vs.* EZEKIEL GILES *et al.*

EZEKIEL GILES *vs.* S. W. LITTLE *et al.*

Cross-bill.

It is hereby stipulated and agreed between the parties in the above-entitled causes that the injunction in the equity suit shall be
175 so far dissolved and so modified that this stipulation shall be in all respects good and valid; that the plea in abatement in the action of Giles *vs.* Owen *et al.* shall be tried Tuesday, the 16th day of this May term of the court, and that the decision thereon shall be taken and entered of record as the decision upon the pleas filed [in] the four other actions at law, and also of the issues in the said suit in equity so far as they are the same, or are joined on the said pleas.

J. M. WOOLWORTH,
Att'y for Giles.
T. M. MARQUETTE,
For Defendants and for Plaintiff in Equity Suit.

Omaha, May 3, 1882.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the annexed copy of stipulation in case of Giles *vs.* Owen *et al.* with the original on file in this office, and that the same is a correct transcript thereof and of the whole of said original.

In testimony whereof I have caused the seal of said court to be hereto affixed, at the city of Omaha, in the said district, this 19th day of September, 1882.

[Seal U. S. Circuit Court.]

ELMER D. FRANK, *Clerk.*

Endorsed: Harwood and Ames, Galey and Abbott, att'ys for defendants and for plaintiffs in equity suit; L. C. Burr, att'y for Giles. 196, F. Giles *vs.* Owen *et al.* Stipulation. Filed May 3, 1882. Elmer D. Frank, clerk. L. C. Burr, for pl'ff.

Burr offered in evidence the finding of facts on the plea in abatement, and the order of the court thereon.

Ames objected [as] immaterial and irrelevant.

The record offered was marked Exhibit R, and the following is a copy of the same:

Finding of Facts.

176 The following is a copy of Exhibit R:

In the Circuit Court of the United States, District of Nebraska.

EZEKIEL GILES
vs.
SAMUEL G. OWEN *et al.* } No. 196. Docket F.

Heard on plea in abatement at May term, 1882. Finding of facts on plea in abatement.

It is found from the pleadings and the testimony produced in support thereof that the plea in abatement heretofore filed by the defendants herein, and on which the hearing was had, is not and cannot be sustained; that the transfer of the real estate in controversy to the plaintiff in this suit was not made for the purpose of enabling the said plaintiff to commence and prosecute this suit in the circuit court of the United States in order to settle the question of title to such real estate, and that so far as apears from the pleadings and proofs produced on the trial no legal impediment appears to prevent or interfere with the plaintiff prosecuting this cause to final judgment.

ELMER S. DUNDY, *Judge.*

Ordered, Upon the facts so found the plea in abatement be, and the same is, overruled, and that the cause shall proceed to trial and final judgment notwithstanding the same, and that the plaintiff recover from the defendants his costs in this behalf expended.

ELMER S. DUNDY, *Judge.*

To which def'ts except and cause continued.

UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the
177 annexed copy of finding of facts in plea in abatement and order of court in case of Giles *vs.* Owen *et al.*, with the original on file in this office, and that the same is a correct transcript thereof, and of the whole of said original.

In testimony whereof I have caused the seal of the said court to be hereto affixed, at the city of Omaha, in said district, this 19th day of September, 1882.

[Seal Circuit Court U. S.]

ELMER D. FRANK, *Clerk.*

Endorsed: 196, F. Giles *vs.* Owen *et al.* Finding of facts on plea in abatement. Filed September 8, 1882. Elmer D. Frank, clerk.

Burr offered the reply to the plea in No. 196, F, in Ezekiel Giles *vs.* S. G. Owen *et al.*

Ames objected [as] immaterial, irrelevant, and not the best evidence and hearsay.

The paper was marked Exhibit S, and the following is a copy of the same:

Reply to Plea in 196, *F.*

In the Circuit Court of the United States for the district of Nebraska.

EZEKIEL GILES *vs.* S. G. OWEN and R. H. OAKLEY *et al.*

The plaintiff, in reply to the answer of defendants, denies each and every allegation therein contained.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

I, L. C. Burr, being duly sworn, do say that I am one of the attorneys for the above-named plaintiff; that I have read the above reply and know the contents thereof, and that the same is true as I verily believe, and that the plaintiff is a non-resident of and absent from the State of Nebraska.

L. C. BURR.

178 Subscribed in my presence and sworn to before me this 29th day of March, A. D. 1882.

[SEAL.] J. S. MARSHALL,
Notary Public.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the annexed copy of reply in case of Giles *vs.* S. G. Owen *et al.* with the original on file in this office, and that the same is a correct transcript thereof and of the whole of said original.

In testimony whereof I have caused the seal of said court to be hereto affixed, at the city of Omaha, in said district, this 19th day of September, 1882.

[Seal U. S. C. C.]

ELMER D. FRANK, *Clerk.*

Endorsed: No. 196, F. Ezekiel Giles *vs.* S. G. Owen *et al.* Reply to plea. Filed March 30th, 1882. Elmer D. Erank, clerk. J. M. Woolworth, for plaintiff.

Burr offered in evidence the stipulation as to the testimony taken by George W. Ames, stenographer, on the plea in abatement, and also a copy of the evidence as written out by stenographer Geo. W. Ames.

But it is expressly agreed by the parties to this suit that no objection will be taken to the evidence taken by reporter Ames on the ground that the same is not certified by reporter Ames. The following are the copies of the stipulation and the testimony, the stipulation being on this folio and the testimony on folios 45 to 104, and the whole forming Exhibit T.

Stipulation as to Use of Testimony in Giles vs. Owen, pages 44 *to* —.

In the Circuit Court of the United States for the District of Neb.
In Equity.

SAMUEL W. LITTLE and Others, Complainants,
vs.
EZEKIEL GILES and Others, Respondents.

179 Stipulation.

It is hereby stipulated by and between the parties in the above-entitled cause that the testimony produced by the several parties on the trial of the cause of Ezekiel Giles, plaintiff, against Samuel G. Owen and others, defendants, at the May, 1882, term of the above-named court, as noted and transcribed by Geo. W. Ames, stenographer, on said trial, shall be certified and returned by Oscar A. Mullon, special master herein, as proofs taken by him in this cause, either party, however, being entitled to take and reserve any and all desired objection or objections, exception or exceptions, to all or any portion of such testimony for incompetency, irrelevancy, or immateriality, and nothing herein contained shall be construed as a waiver by either party of the right to take or tender proof in said cause as in other cases. Also the stipulation, plea in abatement, and judgment in said case—Owen *et al.*

Dated Sept. 28th, 1882.

T. M. MARQUETTE,
HARWOOD AND AMES,
For Complainants.
J. M. WOOLWORTH,
Of Counsel for Def'ts.

Upon the back of said stipulation appear endorsements in words and figures following, to wit: No. 202, F. United States circuit court, district of Nebraska. Samuel W. Little and others *vs.* Ezekiel Giles and others. Stipulation. Filed Sept. 28th, 1882. Elmer D. Frank, clerk.

180 *Testimony at May, 1882, Term.*

In the District Court of the United States within and for the District of Nebraska.

EZEKIEL GILES *vs.* OWEN *et al.*

This cause came on for trial at a regular term of this court held within and for the district aforesaid, before the Hon. Elmer S. Dundy, judge, on the 16th day of May, A. D. 1882, and the following proceedings were had:

Burr & Wheeler appeared on behalf of the plaintiff.
Jas. M. Woolworth, Esqr., and G. L. Lambertson, Esq., of counsel.
Marquette & Deweese appeared on behalf of the defendants.
Messrs. Galey, Harwood & Ames, of counsel.

Exhibits Put in Evidence, which will be Found Folios—

Mr. MARQUETTE: The first deed we propose to introduce is the original deed from Albert Dawson and others to L. C. Burr and H. H. Wheeler, made Sept. 15th, 1879.

Received, marked Ex. "A," attached hereto.

The next deed we offer is from William R. Dawson and others to the same parties, dated Sept. 15th, 1879.

Received, marked Ex. "B," attached hereto.

The next deed we offer is from Wheeler and Burr to Giles, dated April 27th, 1880; acknowledged June 11th, 1880; certified copy.

Received, marked Ex. "C," attached hereto.

We also offer power of attorney from Giles to Burr, dated——

Mr. MARQUETTE: We desire them to produce the agreement with the Dawson heirs, and also have given them notice to pro-
181 duce the deed from Giles to Wheeler.

Mr. WOOLWORTH: We have no such deed from Giles to Wheeler.

Mr. MARQUETTE: We have also given them notice to produce the contract, and also the agreement between Giles and Wheeler & Burr.

H. S. PARKER, sworn on part of the defense, and examined in chief by Mr. MARQUETTE, testified as follows:

Q. Where do you reside?
A. Spencer, Clay county, Iowa.
Q. What is your business?
A. I am in no particular business now; I have been an engineer.
Q. Are you acquainted with the plaintiff here?
A. I have seen him a couple of times, I think.
Q. Will you state to the court where he resides?
A. He resides on section 209,635, in Clay county, Iowa.
Q. Do you know what relation he is to L. C. Burr here?
A. I don't know directly; only by hearsay.

Q. Did you have a conversation with him, or hear a conversation had with him, in reference to any land or lots that he claimed to own at Lincoln, Nebraska?

A. I heard a conversation between my brother, A. C. Parker, and Giles.

Q. You heard the conversation?

A. Yes, sir.

Q. You may go on and state what that conversation was; state in full what was said by both parties.

182 A. I went out there with my brother on the 31st January; we rode out to Giles' place, and he told him he was out doing a little collecting and believed he had a small note against him. Giles said, Yes; he believed there was a little interest back on it. My brother wanted to know if he could fix it up. Giles said he couldn't now; didn't have any money. My brother asked him if he didn't own some land in Lincoln. He said, No; if he did, he didn't know it; none that he knew of. My brother asked him if there wasn't a suit pending there now about some property. He said, Yes; but it wasn't decided yet. My brother asked him if he was one of the heirs. He said he presumed not, in point of law; said he wasn't posted, though; didn't know much about it, and wanted him to correspond with his attorneys, Burr & Wheeler.

Q. What, if anything, was said about the consideration?

A. He told him that the parties concerned in this property had looked up his financial —; saw he was not able to pay 75,000 dollars for that property. He said, "Oh, thunder! Is the property worth that much?" He told him that was the consideration in the deed conveying it to him. He said he had given an ample bond and it was none of their business, and told him again to correspond with his attorneys about the lands.

Q. Was there anything said about what the property consisted of?

A. I think it was property in Lincoln city, and close to the town; town lots.

Q. What, if anything, was said about the deed that he had of it in this conversation?

A. I don't recollect of anything being said about the deed, only when he mentioned about the consideration in the deed conveying it to him; he then asked if the property was worth that much.

183 Q. Do you know anything about Giles' financial circumstances?

Objected to by plaintiff. Overruled. Exception taken.

A. I do, from looking up the records there in the county.

Q. Did he say anything about that to you that day?

A. Yes. He said he was in pretty hard circumstances; his wife was sick some time——

Q. Did he say anything about the amount of his property?

Mr. WOOLWORTH: We object to this conversation, because the deeds introduced show conveyance to Giles in spring of 1880 and this conversation was a very recent one.

Q. Do you know his financial condition about June, 1880?
A. I didn't at that time.

Cross-examination by Mr. BURR:

Q. Who was present at this conversation?
A. There was Mr. Giles and his son part of the time; don't know what his given name is.
Q. Is he about 25 years old?
A. I judge so.
Q. Will you swear that your brother was present with you?
A. Yes, sir.
Q. Was R. H. Oakley present with you?
A. No, sir.
Q. Do you know Mr. Oakley here?
A. I saw him in Spencer.
Q. The day you went to Giles', didn't you?
A. No, sir.
Q. When did you go to Giles' place?
184 A. January 31st, 1882.
Q. Was Mr. Oakley there in January, 1882—the gentleman sitting here?
A. Yes, sir; I think he was.
Q. What day in January?
A. I don't know.
Q. Wasn't he in Spencer the 31st January, 1882?
A. I don't know; I don't think he was.
Q. Will you swear he didn't go to Giles' in a cutter with you?
A. Yes.
Q. Will you swear he was not with you?
A. Yes.
Q. Will you swear it was your brother?
A. Yes; it was my brother.
Q. Didn't Charley Giles tell you that man was from Lincoln that was with you?
A. He supposed I was a lawyer, and my brother told him no, I was his brother and not a lawyer.
Q. Is your brother a lawyer?
A. Yes, sir.
Q. Where does he reside?
A. In Spencer, Clay county, Iowa; he moved there three years ago in June.
Q. Did you draw a draft for 100 dollars within a week for services for that?
A. No, sir.
Q. Did you brother draw it for you?
A. I presume there was one drawed.
185 Q. Was it for 200 or 100 dollars?
A. I didn't see the draft.
Q. How much of it did you get?
A. I have got 50 dollars.
Q. It cost you about 12 to come here?

A. It cost me not quite twelve.

Q. Was that to pay you for your services for working for them up there?

A. There has been no bargain or contract made; it was to make us safe, so we would come; I went out with my brother to hear the conversation.

Q. Your brother was employed by Mr. Oakley?

A. I presume he had authority or he wouldn't went.

Q. Mr. Gayley was there at Spencer, wasn't he?

A. I suppose so.

Q. Didn't you go to Giles' house with him?

A. No, sir.

Q. Didn't you attempt to take his deposition there?

A. No, sir.

Q. Wasn't you present with Mr. Gayley and heard him say that to Giles—that he must have his affidavit?

A. I was not.

Q. What conversation did you have with Mr. Oakley when you met him in Spencer?

A. None; I don't think I was introduced to him.

Q. Did you hear your brother have a conversation with him?

A. No.

186 Q. How did you come to go to Giles' with your brother?

A. He asked me to go.

Q. How long has Mr. Giles and his son lived there, to your knowledge?

A. I couldn't tell you.

Q. They are old settlers?

A. Yes; I presume so.

Q. What did your brother say you were going to Giles' for?

A. He wanted me to go with him and hear the conversation between him and Mr. Giles.

Q. What did he say the conversation was that he wanted you to hear?

Objected to as improper cross-examination.

Q. What did your brother say this conversation was going to be about that he wanted you to listen to?

A. He didn't say much about it.

Q. Didn't he tell you it was about some property in Lincoln?

A. He said some property was involved in some way?

Q. Did he mention Oakley's name?

A. I think I heard him name Owen and Oakley.

Q. Didn't he tell you that Oakley employed him to employ you to go and listen to the conversation?

A. No, sir.

Q. Did he say that Mr. Gayley told him that?

A. No, sir.

Q. Did he state he was going to talk about some Lincoln property?

A. About some property involved.

Q. What did you and your brother say just before you got to Giles' house about what you would say to Giles when you got there?

187 A. I didn't think he told me what he was going to say.

Q. Did he ask you to remember what was said?

A. He told me to recollect the conversation.

Q. Now you recollect it first rate.

A. I remember considerable of it.

Q. Wanted you to remember, so you could be a witness in this case?

A. He didn't say so, that I would be a witness.

Q. You understood it that way?

A. I didn't understand it, because I didn't understand anything about it; he said he wanted me to be a witness to the conversation, but he didn't say whether I would really be a witness or not.

Q. Who brought that note to you against Giles; you say there was a 20-dollar note?

A. I didn't see the note.

Q. Didn't your brother tell you where it came from?

A. No, sir.

A. Didn't you know where it came from?

A. No, sir; I don't know that we had a note that Mr. Oakley gave him.

Q. Your brother isn't in the agricultural business?

A. No, sir.

Q. He told Giles so, didn't he.

A. I don't think so.

Q. Didn't he tell him he was selling foreign machinery?

A. No, sir.

Q. Did he tell him he was a lawyer in this case?

A. No, sir.

188 Q. Told him he had been employed by Galey and Oakley?

A. I think he told him he wanted to see something about it in some way.

Q. Your only purpose in going there was to obtain admissions against Giles about this Lincoln property?

A. He asked me to go out with him to hear the conversation.

Q. I didn't ask you that; your only purpose for going there was to listen to the admissions of Giles, the admissions he would make in this case, and to remember them?

A. I presume I went to hear the conversation.

Q. Didn't you go only for the purpose of hearing what Giles said and remembering it?

A. I had no other purpose, only to go out and hear his conversation, of course.

Q. Who paid you this 50 dollars?

A. C. W. Filmore.

Q. Who did he get it of?

A. Of the bank there, I suppose.

Q. Who is he?

A. He is a partner of my brother.

Q. That is the money you used to come here, given for that purpose?
A. I used part of it.
Q. How much money have they agreed to pay you?
A. Not any certain amount.
Q. How much more are they going to give you?
A. I don't know.
Q. How much are you going to charge them?
189 A. I don't know.
Q. How much do you think you will charge them?
A. I ain't made up my mind yet.
Q. You will charge them a fair fee?
A. I want what it is worth.
Q. You say Charles Giles was present?
A. I don't know his name; there was a young man working round there; there was only four of us; Giles' son was fixing a hay rack not far off.
Q. You have told all the conversation you had up there?
A. I haven't told quite all of it, I don't think; there is a few things I might tell.

Redirect examination:

Mr. MARQUETTE: What other matters are there in that conversation with reference to this matter?
A. Well my brother told him he was authorized to offer him 300 dollars for a quit-claim deed to his interest if he had any. He said there was no use of talking, but to correspond with his attorneys; whatever they would do would be satisfactory to him.
Q. Where did he say his attorneys were?
A. At Lincoln city.
Q. Who did he say they were?
A. I think Burr & Wheeler.
Q. Do you recollect anything else he said in reference to this at this time?
A. I don't recollect of anything else said. He said he was not posted, and to correspond with his attorneys, and whatever
190 they said would be all right.
Q. Did he say anything about being willing to take the 300 dollars?

Objected to by plaintiff.

The COURT: State what he did say, if anything.
WITNESS: He said, "Oh, thunder, there is no use talking about any such thing as that."

The court thereupon adjourned until 2.30 o'clock p. m.

191 C. W. FILLMORE, sworn on part of the defence and examined-in-chief by Mr. MARQUETTE, testified as follows:

Q. Where do you reside?
A. Spencer, Clay county, Iowa.

Q. How long have you resided there?

A. I came to Spencer in the spring of 1878, and lived there about six months; I then moved to Sioux Rapids, about 20 miles south of Spencer, and moved back to Spencer 4th of last July.

Q. Are you acquainted with the plaintiff in this case?

A. Not more than I have seen him a few times.

Q. Did you ever have a conversation with him in reference to land he claimed to own in or about Lincoln?

A. No, sir.

Q. Did you ever hear a conversation?

A. Yes; I heard a conversation.

Q. State to the court what that conversation was.

Mr. WOOLWORTH: We renew our former objection, and take an exception to the ruling of the court.

A. Well, I rode out from Spencer, with Mr. Galey, to Giles' place; we asked Giles to come out doors; his first name was Ezekiel, he said, and he commenced by asking him if he was acquainted with a man named William A. J. Goodin, and Giles said he was not, and then after a moment more Giles said he knew a man 7 or 8 miles north of Spencer named James Goodin; Galey then asked him if he hadn't bought any land of a man named William A. J. Goodin the first of last year, and Giles said he hadn't.

192 Mr. BURR: The fact is, Goodin never sold any property to Giles, and they can't prove it, though they have alleged it in their bill; they must first show that there was a sale from Wm. A. J. Goodin to Giles, and we object for that reason.

Q. State what, if anything, was said about land which Burr & Wheeler had sold him in Lincoln.

A. After he had asked him about Mr. Goodin, then he asked him this question, whether he hadn't purchased some land within the last 2 or 3 months of H. H. Wheeler, and Giles said No; then Mr. Galey asked him if H. H. Wheeler hadn't conveyed any land to him within the last 3 months or within the last year, and then——

Plaintiff objects as immaterial, irrelevant, and incompetent.

Q. Was there anything said about land that Burr & Wheeler had conveyed to him?

A. Yes, sir.

Q. State what was said about that, with regard to land lying in or near Lincoln.

A. Mr. Gayley asked him, after he had got through the conversation I was going to relate, whether or not he hadn't within the last year purchased land or whether Burr & Wheeler hadn't conveyed any land to him within the last year; Giles said they had not.

Q. Did he say within the last year or at any time?

A. He asked him if he had conveyed any land to him within the last year, and his answer was, Not that he knew of. He said there

was some transaction about land in Lincoln City, town lots and lands near Lincoln, but said his agents, Burr & Wheeler,
193 knew all about that matter, and he knew nothing about it, as he said, "As I told you before." Mr. Gayley then asked him if he hadn't paid a man any money or given anything for lands which he bought of Burr & Wheeler, and he paused a moment and then said, "If I didn't my agents did." Mr. Gayley then said, "You gave a bond, did you?" and continued by asking him, before he received an answer, if he signed the bond; and Giles said rather sharply, "What do you take me for; do you think I am a damned fool?" Mr. Gayley said, "No, I don't." He said that he was interested in that question for some parties in Lincoln city, and thought if he could talk with him and get a statement of the facts it would be better than to talk with anybody else; said he thought that would be the most competent testimony, and that was the kind he wanted. Giles again said Burr & Wheeler were his agents, and any information he desired he could get by asking them; then Mr. Gayley asked him if he had the deed in his possession that conveyed this land to him. He said, No. He asked him next if he had ever seen the deed or knew what property it conveyed. He said, No; he never had the deed in his possession. Then Mr. Gayley asked him whether he knew the property described in the deed was property in Lincoln or land near Lincoln. His answer was that he supposed a considerable portion of it was property in Lincoln city. Mr. Gayley then asked him if he had ever paid anything for that property or gave anything for it.

Plaintiff objects that the matter has been gone over twice.

WITNESS: I know in this connection he asked him if he ever paid anything or ever gave anything for the property.

Q. What did he say in reply?

194 A. His reply was about the same as I stated before. Then Giles started to go in the house, and Mr. Gayley said he had one more question to ask him; he could answer or not as he pleased. And Giles stood in the door and said, "What is it?" Mr. Gayley said, Wasn't this property we have been talking about conveyed to you to enable you to bring suit in the United States court? and Giles answered, "No, sir; I have a hand in that transaction and expect to make something out of it."

Q. What, if anything, was said about Mr. Giles ever having seen this property before it was conveyed to him by Burr & Wheeler in this conversation?

A. I think I answered; I stated that Mr. Gayley asked him if he had ever been in Lincoln city, and he said he hadn't; and he asked him if he knew what property.

Q. I ask you now if there was anything said about his ever having seen the property other than what you have testified to?

A. Yes, he asked him if he had ever seen the property conveyed to him in the deed; and he said no, he had not.

Q. Was there anything said about the value of this property conveyed to him by Burr & Wheeler?

A. I don't recollect now.
Q. Do you know anything about Giles' financial condition?
A. Yes, I think I do.
Q. State what he said about it. Did he ever say anything to you about it?
No answer.
Q. Were you acquainted with the financial condition of Giles in June, '80?
195 A. A year ago last June, when I first came to Spencer. I never met Giles, but I heard of him.
Q. Did your firm have any collections upon him?
A. Yes, sir.
Q. State what his financial condition was.

Plaintiff objects.

Q. What knowledge have you?
A. I don't know as I could state from my personal knowledge. If I could state from what the records show in the county—what our abstract books show—what my general understanding was while I was there——
Q. What collections had you against Giles, due and unpaid, at that time?

Plaintiff objects.

Q. What, if anything, do you know of his being owner of any real estate there?

Plaintiff objects as incompetent. Overruled.

A. I know he was the owner of 80 acres of land; his homestead.
Q. Was he the owner of any more than that?
A. No, sir.
Q. How much was it encumbered?
A. There was a mortgage—$132.50. The records don't show that that has ever been cancelled, though since that mortgage was given he has given another for 250 dollars, which is put in as a first-mortgage deed, though the records don't show the first mortgage has been cancelled.
Q. Do you know anything about the value of land in the vicinity of this 80 acres of Giles'?
A. Yes, sir.
Q. About what is its value per acre?
196 A. Well, land is selling, and has sold there within the last 2 or 3 years, for from six to twelve dollars.
Q. What is the 80 acres of Giles' worth per acre?
A. It has never been assessed for over——

Plaintiff objects.

Q. About its fair value per acre?
A. It might be worth 10 dollars per acre. I never looked it over carefully.

Q. Do you estimate this with improvements on it?
A. Yes, sir.
Q. Do you know the dates of these mortgages, when they were due?
A. I couldn't state that from memory. I have a memorandum in my pocket that I made of them.
Q. Were they made before June, 1880?
A. I know this one was.
Q. Don't know so certain about the second one?
A. No—I can tell about when it was due.

Cross-examination by Mr. BURR:

Q. You are an attorney?
A. Yes, sir; at Spencer, Iowa.
Q. You came to Spencer in '78?
A. Yes, and staid there till October, '78; then went to Sioux Rapids, 20 miles south of there, and staid there till about 2 years ago, and went back to Spencer July 1st, 1881.
Q. In June, '80, you didn't live there?
A. No, sir.
197 Q. You had no acquaintance with Giles during your absence?
A. No, sir.
Q. Your acquaintance was limited to while you was living there?
A. Yes, sir.
Q. Did you meet Mr. Oakley when he was there?
[A. Yes, sir.]—Erased in copy.
Q. How much money have you received from them for your services in this case?
A. I was introduced to Mr. Oakley when he was there.
Q. Did he ever introduce you to any money?
A. When he wanted me to come down here——.
Q. Did he pay you any money?
A. Yes.
Q. How much?
A. He paid me 100 dollars.
Q. How much more have you received since?
A. No more. The 100 dollars he sent me to come down here.
Q. If they are successful in this suit, how much are you to get then?
A. There was never anything said about receiving any more, except he stated to me that if we w ald come down he would pay us what it was worth—a fair price.
Q. They will owe you a further sum of money?
A. That was all that was said. I didn't know Mr. Oakley, and wouldn't come to this place or any other without being paid for it.
Q. You expect payment for coming here?
A. Certainly. I expect a fair compensation for my time.
Q. That compensation is to be determined, more or less, on the success or failure of this suit?

198 A. Not that I know of.

Q. If they win this suit wouldn't you charge them a larger fee than if they lost it?

A. No, sir. I expect what it is worth for a man to leave his business and come this distance.

Q. You are a partner of the brother of the witness last on the stand?

A. Yes, sir.

Q. Did you visit Giles' house with the witness last on the stand?

A. No, sir.

Q. Do you know whether his brother did or not?

A. No, sir. I don't know more than he got the team and went that way and told me about it.

Q. Did you see Mr. Oakley the first time he came up?

A. Yes, sir.

Q. Was there any other Lincoln man with him?

A. Not that I know of.

Q. Does your partner wear a long beard?

A. No, sir. He didn't wear any at all then; he does now; last winter he only wore a moustache.

Q. Are you sure there was no person from Lincoln out there with Mr. Oakley?

A. No, sir; but I am sure I didn't see anybody else with him.

Q. You was employed to go out to the house of Giles?

A. Mr. Gayley asked me to get a team and take him out.

Q. You got the 100 dollars then?

A. No, sir.

199 Q. When did you get the 100 dollars, about a week ago?

A. Yes, sir.

Q. Wasn't that draft for more than a hundred dollars?

A. No, sir.

Q. Did you give Parker half of it?

A. Yes, sir.

Q. And kept the other half?

A. Yes, sir.

Q. The balance you are to get while here?

A. I don't know anything about the balance.

Q. How much more is to be paid to Parker?

A. The understanding is that I am to have what it is worth to come down here; what it is worth to leave my business and come here. He said he would pay me a fair price; that is the words he used.

Q. Was that the bargain with Parker?

A. There was no bargain with any one, except his letter to us asking if we would come down.

Q. Where is your letter?

A. It is at Spencer.

Q. Can you get it?

A. Yes, if I have time.

Q. As I understand, you gave Parker 50 dollars and kept 100 for yourself for your services?

A. No, sir; we never received any more than 100 dollars.
Q. You only received one hundred dollars in all?
A. Yes, sir.
200 Q. Did Parker receive the 50 dollars?
A. Yes; Parker here received the 50 dollars.
Q. And you received 100 dollars?
A. Mr. Oakley wrote and said if we would come down he would pay us a fair compensation for coming down, for our expenses and trouble. He said we could draw for 100 dollars on him. I drew for one hundred dollars and gave Parker half of it.
Q. Neither of you drew on Mr. Gayley, then?
A. No, sir.

Redirect:

Q. Did Mr. Gayley ever pay, or agree to pay, you any money?
A. No, sir.
Q. What was this 100 dollars for?
A. To bear our expenses here—to secure us the cost of coming down here, at least. I wasn't acquainted with Mr. Oakley, and wouldn't make a trip at my own expense—without having the expenses paid.

Recross:

Q. You say you consulted the records to see what mortgages were against Giles?
A. Yes.
Q. Did you look to see where he appeared as mortgagee?
A. Yes.
Q. You found him holding some mortgages?
A. Yes; I found one mortgage where one Milton Giles had given a mortgage for 300 dollars, I think, and on the same day the mortgage was given the mortgage on record shows that it was as-
201 signed—well, I am not positive about that, but I know there was an assignment made to Ezekiel Giles of that mortgage.
Q. There was another?
A. Not that I found.
Q. Don't you know that Giles had some money loaned out there at interest?
A. I do not.
Q. Didn't you draw the papers for one mortgage for 750 dollars, where Giles was the holder and owner of the note?
A. I did not.
Q. What is your partner's name?
A. A. C. Parker.
Q. Was he there in the spring of '80?
A. Yes.
Q. Will you swear that you examined the records closely, so that you can swear that a mortgage like the one in question does not exist on the records of that county, or did at that time?
A. I'll swear that I examined the records carefully and found nothing of that kind on the records.

Q. In the mortgage columns?
A. Yes; under both columns.

S. B. GALEY, sworn on part of the defense and examined in chief by Mr. MARQUETTE, testified as follows:

202 Q. Are you acquainted with the plaintiff in this case?
A. I met him once in Iowa, about the first of last February, I think.
Q. Did you have any conversation with him with reference to land that has been conveyed to him in or near Lincoln?
A. Yes, sir.
Q. Go on and state what that conversation was.
A. I first asked him if his name was Ezekiel Giles. He said it was. Then there was some conversation ensued in regard to this Goodwin matter, which was stated here. In the course of the conversation—I cannot give the order of it, but in its course—I asked him if he had a deed in his possession—this conveyance made by Burr & Wheeler to him of this property. He said he had not. I asked him if he had ever had it in his possession. He said he had not. I asked him if he had ever seen it. He said he had not. I asked him if he had ever seen the property it purported to convey. He said he had not. I asked him if he had ever been to Lincoln. He said he had not. I asked him if he knew the character of the property—whether it was property or lands outside. He said he thought a considerable portion of it was in Lincoln. I asked him if he had ever paid anything for it, and he made me this answer: "Well, if I didn't my bondsmen have." I asked him if he had given a bond. He said he had. I asked him if he had signed it, and he wanted to know if I thought he was a fool, or words to that effect. I told him I did not. He wanted to know what I was getting at. I said I came to see him to get at the facts of that transfer of Burr & Wheeler to him. He said his agents, Burr & Wheeler, at Lincoln,
203 knew all about that transaction, and I could get all the information I wanted from them. I said I preferred to talk with him about it, and if he would make a statement of all the facts it would save the inconvenience of taking his deposition. He said that before his deposition was taken he would want his counsel there, &c. I think that was the conversation substantially as it relates to the particular matter in issue here.

Cross-examination by Mr. BURR:

Q. You are counsel in this case?
A. Yes.
Q. How much have you been paid in this case?
A. I don't remember now; 100 dollars, I think, and something more.
Q. You have a large contingent fee in the result of this case?
A. I hope to make a very reasonable fee.
Q. It is a large contingent fee, isn't it?

Defense objects.

A. There is no arrangement about any contingent fee that I know of.

Q. You went up there for Owen & Oakley, as their attorney?

A. Yes; for the parties interested.

Q. Did you have any agricultural notes in your possession then?

A. No, sir; Giles asked me where I was from, and I said from Lincoln. He asked my name and I told him.

Q. Did you say you was a sewing machine agent?

A. No, sir.

Q. Did you ask him if he had a Singer sewing machine?

A. No, sir; nothing was said about sewing machines.

Q. Did you ask him if his sewing machine was out of repair?

A. I have already stated that there was nothing said about
204 sewing machines by anybody.

Q. Nothing said about a Singer or any sewing machine by anybody?

A. No, sir.

Q. Didn't you tell Giles that if he didn't tell you all about this that you had a paper in your pocket and would proceed immediately and take his deposition?

A. No; I told him if he would make a plain statement of facts it would save the inconvenience of taking his deposition.

Q. Didn't you take out a paper and say he must go immediately before a justice of the peace?

A. No, sir.

Q. Didn't you go down to Mr. Walker's, the justice of the peace?

A. No, sir; I don't know him; never saw him.

Q. Didn't you ask Giles where Mr. Walker, the justice of the peace, lived?

A. Yes.

Q. Didn't you tell Giles that he was compelled to go immediately before that justice and give his deposition?

A. No, sir; nothing of the sort.

Q. You only said if he would tell you everything it would save you the necessity of taking his deposition?

A. I said that.

Q. Did you afterwards take his deposition?

A. No, sir.

Q. Why?

A. Didn't want it.

Q. Then you didn't want it when you told him you wanted to take it?

205 A. No, sir; he had stated about all the facts that I expected to prove in his deposition.

ALBERT DAWSON, sworn on part of the defense and examined in chief by Mr. GAYLEY, testified as follows:

Q. Where do you reside?

A. In Iowa.

Q. Are you one of the heirs of Jacob Dawson, deceased?

A. I am.

Q. How long have you known Burr & Wheeler?
A. I have known Burr for 7 or 8 years.
Q. Did you ever make any contract with Burr & Wheeler in respect to the share that you was to receive from the estate, in case of recovery in this suit?

Plaintiff objects.

Q. Did you enter into any contract—written contract—yourself and the heirs on the one part, and Burr & Wheeler on the other part?
A. We did.
Q. Have you that contract with you?
A. I have.
Q. Let us see it, please.

Witness produces the contract in question.

Q. Is this the contract?
A. That is the contract, sir.
Q. Are you acquainted with the handwriting of L. C. Burr and H. H. Wheeler?
206 A. Yes, sir.
Q. Was that signed in your presence?
A. It was not.
Q. Are you acquainted with the signature of L. C. Burr?
A. Yes, sir.
Q. Is that his signature?
A. Yes, sir.
Q. Was there any other agreement made prior to this entered into by you and the other heirs with Burr & Wheeler? This is dated January, 1882. Did you make any other agreement?

Mr. BURR: I object to misleading the witness in this manner:

[A.] ———.
Q. Are you acquainted with the plaintiff in this case?
A. Since to-day about noon.
Q. Did you ever meet him before?
A. No, sir.
Q. State when you first knew about the property being conveyed to Giles, the plaintiff in this action. When did you first ascertain that fact?

Plaintiff objects as immaterial.

A. In December last.
Q. Did you have any conversation with Mr. Burr in respect to this alleged conveyance to Mr. Giles in reference to this property in dispute?

Plaintiff objects that it is not shown that Giles was present.

The court directs this matter be passed over for the present and authorities be presented to the court this evening.

207 Counsel for defense states as follows:
We propose to show by this witness that he had a conver-

sation with L. C. Burr, one of the grantors of the plaintiff of the property in question, in which conversation Burr told the witness that the sole purpose of the conveyance to plaintiff was to enable himself and Wheeler, grantees, to prosecute this action in the United States court. This conversation took place about the month of December, 1881.

Q. State whether or not this letter I hand you is in the handwriting of L. C. Burr.

Presents letter to witness.

A. It is.
Q. Is that his signature?
A. It is.

Letter marked for identification Ex. "E," but not offered in evidence.

Q. State whether or not that letter is in the handwriting of L. C. Burr, and whether that is his signature or not.

Presents letter to witness.

A. It is.

Letter marked for identification Ex. "F," but not offered in evidence.

Mr. MARQUETTE: We desire to introduce in evidence the papers in the case of Giles against Bacon.

The COURT: You can refer to any dates at any time.

Mr. WOOLWORTH: We object to that record going in as immaterial.

208 Mr. MARQUETTE: We offer the record, then, in evidence. We offer the agreement between the Dawson heirs and Burr & Wheeler, dated Nov. 10th, 1879.

Received, marked Ex. "G," attached hereto.

Mr. MARQUETTE: We offer the agreement in evidence, between Giles and Wheeler and Burr, dated April 27th, 1880.

Received, marked Ex. "H," attached hereto.

R. H. OAKLEY, sworn on behalf of the defense and examined in chief by Mr. MARQUETTE, testified as follows:

Q. Where do you reside?
A. In Lincoln; have lived there a little over 12 years; am acquainted with the value of real estate there and its surroundings.
Q. Are you acquainted with the land conveyed in this deed from Wheeler & Burr to Giles?
A. I am familiar with a large portion of it, if not all.
Q. Are you acquainted with its value?
A. Yes; I think I am.
Q. What is its value—the whole of it? What would it be worth—what is in suit?

Plaintiff objects as immaterial. Overruled.

The COURT: State generally.

Overruled.

A. I would say the property is worth from seventy to eighty thousand dollars.

209 Q. What is the property of Owen & Oakley?

A. That is business property on the south side of the square; it is worth, approximately, eight thousand dollars.

Q. What is the Little property—that which is in suit between Giles and Little—what is it worth?

A. Approximately, nine thousand dollars.

Q. What are the improvements on the last-mentioned property?

A. There is a two-story brick store on it about 85 feet deep, perhaps ninety—it is 100 feet deep.

Q. How much in Stewart?

A. About eight thousand dollars, approximately.

Q. And Alexander, in that?

A. That is about the same, a little less maybe, but about the same; the store is not quite as deep, as I remember.

Q. What was this property worth at the time of this conveyance in June, 1880—that is, the whole property that was conveyed by Burr & Wheeler to Giles?

A. The valuation would be much the same as now—maybe not quite as much.

Q. What was it then?

A. I think within 10 p'r c'nt. of the value I have put on it now; say on the Owen & Oakley property 7,000 dollars at that time.

Q. What was the whole property conveyed by the deed worth in June, 1880?

A. Between 70,000 and 80,000 dollars, I should say.

Q. What was the property in the four other suits worth?

A. The property was worth much the same as now; I should say it was worth not much less than at the present time.

Cross-examination by Mr. BURR:

210 Q. You say Owen & Oakley's store is worth $8,000.00?

A. Approximately, I should say.

Q. You bought pending suit?

A. We knew something about the suit.

Q. You knew about the question—about the Dawson will?

Objected to by defense as improper cross-examination.

Q. You bought it for 6,100 dollars?

A. No, sir; 6,500, cash.

Q. You bought at depreciated value because of this suit?

A. I didn't so understand it; the party of whom we bought desired to change his business, and was very anxious to sell and is now, I think, in this State; we had an opportunity to buy for 6,500 dollars, and bought it.

Q. On the day that you bought this title from Bacon, what do

you say was the title of Ezekiel Giles in all this land named in this deed, situated just as it was; what was it worth?

Defense object as improper cross-examination.

Q. What do you consider the Giles title worth to these premises, situated as it was at that time, the day you bought it, the other title of Bacon?

Defense object to enquiring about what title is worth; that is a question of law; it is not proper cross-examination; it calls for the opinion of the witness as to the title and not the value of the lands; also it is irrelevant. Overruled. Defendants except.

Q. When you bought this property of Bacon, what was the
211 title from the Dawson heirs to Giles worth at that time to that piece of property that you purchased?

Same objection as last above. Overruled. Exception taken.

A. I can only give my impression. My judgment was that I followed this court in its decision of the will, and that Giles' title was not very valuable. I concurred in the opinion of the court.

Q. At the time of the conveyance by Burr & Wheeler to Giles, about June, 1880, what was his title worth then? That was prior to the decision of the circuit court. I mean all this property in Giles' deed.

Objected to by defense.

A. I judged from the decision of the court that it would not amount to much.

Court here adjourned until to-morrow morning at 10 o'clock.

Proceedings.

WEDNESDAY, *May 17th*, 1882.

Counsel for defense offers in evidence letter from L. C. Burr to Wm. R. Dawson, dated Lincoln, Nebr., July 23d, 1880.

Received marked Ex. "1," attached hereto.

Mr. WOOLWORTH: We object to the introduction of this letter on the ground that it is hearsay, secondary evidence, being statements and admissions of Burr after his conveyance to Giles, and therefore cannot be evidence against Giles.

Mr. LAMBERTSON: We object to the admission of the letter because it was not offered while Mr. Dawson was on the stand,
212 and we had no opportunity of cross-examination on it.

W. G. VAN DORN, sworn on part of defense and examined in chief by Mr. GAYLEY, testified as follows:

Q. Where do you reside?
A. Lincoln, Nebraska.
Q. Are you acquainted with L. C. Burr?
A. Yes.
Q. State whether you had any conversation with him with refer-

ence to the purpose he had in view in conveying the property in controversy to the plaintiff in this action.

A. Yes.

Q. State what that conversation was.

Plaintiff objects that it would be hearsay evidence, because it is not shown there was any collusion between Burr and Giles, and therefore Burr's admissions would not bind Giles. Overruled. Exception taken.

A. I saw the transfer in the paper a day or two before I had the conversation with Burr; he told me before that that he would make us all right in this matter, and I began to think it looked like he couldn't make us all right. I stated to him, "You have transferred this property to another man and I don't see how you can make us all right. If you wish to——

Plaintiff objects as not responsive.

WITNESS: He said to me he was compelled to make this transfer in order to get jurisdiction in the Supreme Court of the United States.

213 Q. Was that all the conversation you had with him in respect to his purpose in making this conveyance?

A. No; we had a great many.

Q. When did this conversation of which you speak occur?

A. It was a day or two after I saw the transfer in the paper—some time last fall.

Q. Did you ever have any other conversation in which Burr said to you what his purpose was?

A. Not in that language. He frequently told me he would make us fellows that bought of him all right.

Plaintiff objects as not responsive.

WITNESS: I don't recollect any other conversation to that point.

Q. Are you the owner of the property conveyed by Burr & Wheeler to Giles?

A. No, sir.

Q. Is your son the owner of some of this property?

A. My son has an undivided half of 40 acres.

Q. Was that the property you were talking about at the time you had the conversation which you have related?

A. Yes.

Q. From whom did your son purchase the property that you talked about in this conversation?

Plaintiff objects as immaterial. Sustained.

Q. State whether or not he stated in that conversation with you how he would make you all right.

Objected to as immaterial.

Q. Who was present at the time you had this conversation with L. C. Burr?

214 A. There was some other parties—I think my son, but am not positive.

Q. Was Mr. Wheeler present?

A. I am not certain; I know he was while we was talking about this matter, but whether at the time this particular conversation took place or not I can't say.

Cross-examination by Mr. BURR:

Q. Where did this conversation take place?

A. Up in the clerk's office; either there or on the street.

Q. In the county clerk's office?

A. Yes.

Q. You and your son came there?

A. Yes, sir.

Q. Don't you remember who was present at that time?

A. I am not quite clear.

Q. Wasn't Frank M'Clusky?

A. I don't know him.

Q. Wheeler was there?

A. I think so.

Q. L. W. Billings there?

A. He might have been; I don't recollect.

Q. Who spoke first, you or me?

A. I suppose I did; I don't know. I know I felt pretty worked up over it.

Q. Can you give the date?

A. It was a day or two after it was published in the papers that the transfer was made from you to Giles.

215 Q. It was the day of the recording of this deed—of the deeds—then?

A. I know it was published a day or two before that.

Q. What paper was it published in?

A. The Journal.

Q. Showing the transfers of real estate?

A. Yes.

Q. That appears there upon the record?

A. I read it in the paper; I didn't examine the record.

Q. You read it in the Morning Journal that the transfers of real estate in the clerk's office had been made that day?

A. The morning before, I did.

Q. When was that date?

A. I can't recollect; I think it was in October, but am not certain. I recollect reading it, and as quick as I could—as quick as I read it—I was anxious about it, and wanted to see you.

Q. Did you speak to Burr & Wheeler, or just to Burr?

A. I think I only spoke to Burr; I didn't know Wheeler then. I found out afterwards that was him, but I didn't know it when I spoke.

Q. How long did this conversation last?

A. Only a few minutes.

Q. What did you say about Giles' deeds?

A. I says to you that you had been promising us that you would make this thing all right with us, and I said I thought you had it now out of your hands, and you wouldn't be able to do it if you were willing to, and you said you was compelled to do it to get jurisdiction in the Supreme Court.

Q. Will you swear you said that?

216 A. I am under oath, and I relate just exactly what was said.

Q. What was it that you saw in the Lincoln Journal?

A. I saw property transferred from the heirs to you and Wheeler. I saw it transferred from you and Wheeler to Giles. I saw a third transfer that I didn't charge my mind with the parties.

Q. Was that in a list of property transferred that day, or did it stand in a place by itself?

A. It stood at the bottom of the list, I think.

Q. Wasn't it an item in the local news that the local editor said that such was the case?

A. No. I saw that also.

Q. Will you swear that it appeared in the paper at that time among the list of deeds recorded?

A. I am very certain.

Q. You saw the notice of the local editor that such deeds had been filed?

A. I think I did.

Q. This list you speak of purports to be a list of the property filed—deeds filed in the clerk's office on that day?

A. It is the usual way it is done; I didn't see anything out of the usual way.

Q. Was there any deeds there in the clerk's office while you met Burr and Wheeler?

A. I don't know.

Q. Do you recollect seeing Billingsley there?

A. I don't recollect; he might have been there. There was several in the room, I think.

Q. You think it was in October?

A. I am not certain.

217 Q. Did you see any such paper as that in my hand?

Presents paper to witness.

A. I did not.

Q. In Wheeler's hands?

A. No, sir.

Q. Did we show you such a paper?

A. I think not.

Q. Did we exhibit to you the deeds, or any of them, you are talking about?

A. I think not.

Q. The best that you can recollect is that this was in October; can you put a certain day?

A. No; I wouldn't even say it was in October. I only recollect reading it in the paper and then going up next day, but I don't

know whether it was in October; I have no special recollection about that; I couldn't tell any more about it than the man in the moon—about that deed.

Q. You say you had several conversations with me?

A. Yes; about the property, at different times.

Q. Will you swear it was before the 11th of January, 1882?

A. I don't know but that it was.

C. P. Ross, sworn on the part of the defense and examined in chief by Mr. GALEY, testified as follows:

Q. Where do you live?

A. Cass county, Nebraska.

Q. What relation are you to the heirs of Dawson?

218 A. I am a cousin of A. L. Dawson.

Q. What connection have you had with this case in behalf of the heirs of Jacob Dawson, deceased, in regard to this property conveyed by Burr & Wheeler to Giles?

A. I don't understand your question.

Q. Are you interested in any way?

A. So far as I am a friend and relative of the family.

Q. State whether or not you had any conversation with Mr. Wheeler in regard to this conveyance from Burr & Wheeler to Giles.

Mr. LAMBERTON: We object to this testimony as incompetent; the admissions of Wheeler are not competent to bind the plaintiff in this case. Overruled. Exception taken.

[A.] ———.

[Q.] State whether you ever had any conversation with H. H. Wheeler in regard to this conveyance to Giles; the purpose of it, &c.?

A. I don't recollect whether there was ever anything said by Wheeler to me regarding that matter—that is, as I understand the question.

Q. What conversation did you have with him with regard to that conveyance?

A. I had a conversation with Wheeler; I asked Wheeler what

———

Mr. LAMBERTSON: We object to this testimony as incompetent; the witness says he has no remembrance of any conversation about the transfer. Sustained.

Q. What conversation did you have with Wheeler in regard to this conveyance by Burr & Wheeler?

Mr. LAMBERTSON: We renew our former objection. Overruled. Exception taken.

A. I disremember that there ever was any conversation of

219 the kind about the transfer.

Q. What conversation did you ever have with H. H. Wheeler in regard to a conveyance or deed from Giles, the plaintiff

here, to him of this property which was conveyed by Burr & Wheeler to Giles?

Mr. BURR: We object because it assumes there was a conveyance from Giles to Burr & Wheeler.

Mr. LAMBERTSON: We renew our ojection that any admissions of Wheeler, grantee in that case, should not bind Giles, plaintiff in this case.

The court here adjourned until to-morrow morning at 11 a. m.

Proceedings 2 o'clock p. m.

Objection overruled. Exception taken.

WITNESS (resuming): I asked Wheeler what he had to assure him against Giles—that is, what surety he had of a settlement of Giles—and he said he had a deed, although I can't say whether it was a deed or not.

Mr. WOOLWORTH: We object to that. It is the contents of a written instrument, and ask that it be stricken out.

Q. Did he say he had a deed from Giles?

Objected to as leading.

Q. Are you acquainted the handwriting of L. C. Burr?
A. I have seen it.
Q. State whether or not that letter is in his handwriting.

220 Presents letter to witness.

A. I am not enough acquainted with his writing to make a statement.
Q. Do you know Burr's signature when you see it?
A. I think I do.

Mr. WOOLWORTH: Did you ever see him write?
A. No, sir.

Mr. GAYLEY (resuming): Have you had a good deal of correspondence with him?
A. No, sir.
Q. Can you state whether that is his signature or not?
A. I couldn't positively.
Q. Are you acquainted with his signature?
A. I have seen what I supposed was his signature.
Q. Do you know whether that is L. C. Burr's signature or not?
A. I do not.
Q. State whether you ever heard any conversation relative to the conveyance of this property to Giles, between Giles and Burr and Wheeler and other parties, within the last 24 or 48 hours?
A. I don't quite understand what that means; will you make it a little plainer?
Q. Didn't Burr and Wheeler and the heirs and yourself and Giles—has there been any talk between the heirs and Burr and Wheeler and Giles, within your knowledge, within the last two days?
A. Well, there has been conversation, I think.

Q. Has there been any agreements entered into or contracts
221 made in your presence between Giles and Burr and Wheeler and the heirs of this estate within the last two days, within your knowledge?

Mr. LAMBERTSON: We object that agreements made now cannot affect the question whether or not plaintiff had a right to commence an action in this court at the time he did; also as incompetent, immaterial, and irrelevant. Overruled. Exception taken.

A. Yes.

Mr. WOOLWORTH: Was it in writing?
A. Yes.

Mr. WOOLWORTH: We object then.

Mr. GAYLEY (resuming): You may state what conversation you heard, or was at, between these parties that was not put in writing.
A. That is a pretty hard matter to do; there was so much said about it.

Mr. LAMBERTSON: All of your talk went into this agreement?
A. I suppose so.

Mr. GAYLEY (resuming): State whether or not, if you know, an agreement was made of some sort between Giles, plaintiff in this action, and Burr and Wheeler and the Dawson heirs since the commencement of this trial.
A. Yes.
Q. With reference to this property in controversy?
A. Yes, sir.
Q. You may state whether you ever had a conversation with Giles or Burr or Wheeler at any time in which they told you, or either of them told you, the reason why this property was conveyed to Giles.
222 Plaintiff objects that admissions of Burr and Wheeler cannot bind plaintiff; as incompetent admissions. Overruled. Exception taken.

A. I don't remember anything substantially in regard to that matter that was said by Burr and Wheeler or Giles.
Q. Do you remember anything that was said by them?
A. I don't think I do; I can't call to memory anything that was said.
Q. You was acting for the heirs as their friend in this transaction?
A. Yes.
Q. You have had a good many conversations with L. C. Burr in respect to this matter, haven't you?

Objected to as leading. Overruled.

A. I have talked with Burr a good deal.
Q. Have you had a good deal of talk with Wheeler?
A. Not as much as with Burr.
Q. Have you talked a good deal with Giles about it?
A. No, sir.

Q. Did Burr, in any of his talk to you about this matter, state the reason why Giles became apparantly the owner of this property?

Objected to. Sustained.

Q. Did Burr ever explain to you why he and Wheeler conveyed this property to Giles?

A. I don't think he did; if he did, I don't remember.

Q. In whose possession is the agreement, or the document containing the agreement, which, you say, was put in writing, between Giles and the heirs and Burr & Wheeler?

223 A. I think E. C. Dawson has possession of it.

Q. Who is he?

A. He is a man residing in Richardson county.

Q. What relation is he to the heirs of Jacob Dawson, deceased?

A. He is a cousin to Albert Dawson.

Q. Do you know where L. C. Burr resides?

A. I think he resides in Lincoln, Nebraska.

Q. Where does H. H. Wheeler reside?

A. In the same place.

Q. Where does Albert Dawson reside?

A. In Mills county, Iowa; he has not been there very long.

Q. How long?

A. I don't remember.

Q. Where did he reside at the commencement of this action—the one we are trying—commenced last January?

A. He resides in Cass county, Nebraska.

Cross-examination of this witness waived.

ALBERT DAWSON, recalled on part of the defense and examined in chief by Mr. GALEY, testified as follows:

Q. State whether or not you ever had a conversation with L. C. Burr in regard to the reason why he and Wheeler conveyed the property in controversy to the plaintiff Giles?

224 Objected to as incompetent, irrelevant, and immaterial. Overruled. Exception taken.

A. I had a little conversation with Burr in regard to that matter.

Q. State what that conversation was.

Same objection as last above. Overruled Exception taken.

A. He said something about putting it in Giles' name for the purpose of this suit. I don't know what suit he meant.

Q. What had you been talking about before that?

A. He had so many suits. He said "this suit." I don't know what suit he meant.

Q. What caused him to say anything about it; did you speak to him about it?

A. I asked him some question—I don't remember what it was—how it came up.

Q. Did you ask him the reason why this land was conveyed to Giles?

A. I did.
Q. What did he say?
A. He said it was for the purpose of this suit.
Q. When was that?
A. It was in the month of December. I can't say whether it was '80 or '81. I am pretty positive it was in the month of December.
Q. Did he say anything about Giles being a non-resident of the State?

Objected to as leading. Sustained.

Q. You have had some conversation with Burr within the last 24 hours as to what you will testify to, or with Giles or Wheeler, since this trial commenced, in regard to what your testimony would be in this trial?
225 A. No, sir; I have not said a word to them.
Q. State whether, in that conversation you had with Burr, anything was said about Giles being a non-resident of the State of Nebraska. And, if so, what was said?

Objected to as leading. Overruled.

A. I think he said because Giles was a non-resident, or something of that kind.
Q. What else was said about it?
A. That is all I know about that subject.
Q. Was there anything said about what court the action was to be prosecuted in?

Objected to.

A. I don't know know as he stated the court; I don't remember what court he stated, if he stated any court in particular.
Q. Why did you ask him the question why he conveyed to Giles; what interest had you in the matter?

Objected to witness stating his motive. Sustained.

Q. You were one of the grantors of this property in question which was conveyed to Burr & Wheeler, wasn't you?
A. I was.
Q. State whether or not you subsequently, after conveying to Burr & Wheeler, *you* conveyed your interest to any other person?

Objected that there is nothing in the pleadings to warrant the question. Sustained.

Q. Was the conversation which you had with Burr which you have related before or after the opinion of the Supreme Court
226 of the United States was published in the newspaper, if you know? I refer to the conversation in which he said he had conveyed to Giles for the purposes of this suit.
A. I think it was before that; can't say how long before.
Q. Was it a short time or a good while before?
A. It was a short time only, as near as I can remember.
Q. State whether or not you know the handwriting of L. C. Burr.
A. I do.

Q. Is that letter in his handwriting?

Presents letter to witness.

A. It is.

Q. Look at that signature and state whether that is in his handwriting.

A. It is.

Mr. GALEY: I now wish to offer this letter in evidence.

Received subject to plaintiff's objection, marked Ex. "J," attached hereto.

Q. How many brothers and sisters have you living?

A. I have no brothers; two sisters.

Q. What are their names?

A. Melita and Minnie.

Q. Where do they reside?

A. In Nebraska.

Q. State whether you ever had any conversation with Burr or not in which he made the proposition to purchase your interest, or the interest you claimed in the property conveyed to Giles?

Mr. WOOLWORTH: We object to that. Sustained. Defense excepts.

227 Cross-examination by Mr. WOOLWORTH:

Q. I want to call your attention to this deed, Mr. Dawson; that is your deed, isn't it?

Presents deed to witness. (Ex. "A.")

A. Yes, that is my deed.

Q. I see the date of this deed is Sept. 15th, '79. Now, at the time of this conveyance when you executed this paper, was anything said between you and Burr & Wheeler as to a conveyance of this property to Giles?

Defense objects as not proper cross-examination. Overruled. Exception taken.

Q. This paper is dated Sept. 15th, '79. State whether or not at that time there was anything said between you and Burr & Wheeler, or either of them, about a conveyance of this property by them to Giles.

Defense objects. Overruled.

A. No, sir, there was not anything said to me between Burr & Wheeler about conveying to Giles.

Q. Was there as late as Feb'y 6th, 1880, which is the date of the acknowledgment of this paper, anything said between you & Burr & Wheeler about their conveying the property to Giles—that would be two years ago last February?

A. I think not.

Q. Can you tell where you were in February, 1880—where you were living?

A. I was living in Franklin county, Nebraska.

Q. At the time you were out there did you have any information from Burr & Wheeler of conveying to Giles?

228

A. No, sir.

Q. Did you know they were going to convey to Giles before they had done so?

A. No, sir.

Q. Then you didn't know anything about the matter till after they had made that conveyance to Giles?

A. No, sir.

Q. Now, when you first heard of it had the court decided in favor of Giles in one of these lawsuits? Isn't this true, Mr. Dawson, that it was not till after the Supreme Court of the United States had decided in favor of Giles that you first heard that they had conveyed to him?

A. I think it was.

Q. That decision, then, had been made at that time?

A. Yes, sir.

Q. Then you went to them and had this conversation—to Burr and had this conversation you have spoken of?

A. Yes, sir.

Q. And it was not till after this decision that this conversation was had; isn't that true?

A. I think so.

Q. Did you ever enter into any conspiracy with Burr and Wheeler or Giles or anybody else?

Defendants object.

Redirect:

Q. Where did this conversation between you and Burr in regard to the conveyance to Giles take place?

229

Plaintiff objects, as this has already been gone over.

Q. How did you first come to know that this property had been conveyed to Giles?

Plaintiff objects as immaterial. Overruled.

A. I think Mr. Burr told me first. Mr. Bohanon asked me if I had ever conveyed anything to Giles; I said I had not. Mr. Burr afterwards told me it was conveyed to Giles.

Q. Did Burr tell you it was conveyed to Giles before you asked him why he conveyed it to Giles?

Objected to as leading.

Q. What induced you to ask Mr. Burr why he conveyed it to Giles?

Objected to as immaterial.

Q. Was Mr. Burr at your house some time last December?

A. He was.

Q. Was it there and at that time that you had this conversation with him?
A. No, sir.
Q. Was it before or after that?
A. After that.
Q. How long after that?
A. I don't remember how long.
Q. What consideration, if any, was paid to you and the heirs for this conveyance of yourself and the heirs to Burr & Wheeler?
A. I have his written agreement for payments; that is the only consideration.

230 Plaintiff here admits that there was no other consideration but the agreement and 200 dollars.

Q. Was there any money paid you in consideration of the deeds to Giles?
A. No, sir.
Q. Do you know whether any of the other heirs received any money from Burr & Wheeler in consideration of the conveyance to them of this property?
A. I don't know positively; I think——
Q. Do you remember — they did or not?
A. No, sir; I don't.

Recross. Mr. WOOLWORTH:

Q. Your brother William is dead?
A. Yes, sir.
Q. He signed one of these deeds?
A. Yes, sir.
Q. Didn't he pay you part of the money that Burr had paid him?

Defense objects, as witness has stated that he received no money.

Q. Didn't William give you some money that Burr & Wheeler gave him?
A. He sent me some money, but didn't say for what purpose.
Q. On account of this dealing with Burr & Wheeler, wasn't it?
A. I don't remember; it may be.

W. A. J. GOODIN, sworn on behalf of the defense and examined in chief by Mr. GAYLEY, testified as follows:

231 Q. Where do you reside?
A. Mills county, Iowa.
Q. What relation are you to the heirs of Jacob Dawson, deceased?
A. Albert Dawson is my brother-in-law—the last witness.
Q. State whether or not you ever had any conversation with Burr in respect to the property in controversy in this suit.
A. I have.

Plaintiffs renew their objection as made while last witness was on stand.

Q. State whether you had any conversation in regard to the conveyance of the property to the plaintiff in this case.

A. Yes, sir.

Q. State when you had conversation with him on this subject.

A. About the 11th of January, 1880.

Q. Where did you meet Mr. Burr?

A. At A. L. Dawson's.

Q. What was said by Burr at that time in regard to this conveyance to Giles?

A. The real purpose I don't know as there was anything said; I asked Burr something; we were talking about this contract; we had——

The COURT: Get at the conveyance.

The WITNESS: I understand the purpose was to convey the land to Giles; I asked Burr if that didn't debar him from complying with his contract he had made, and he said he considered it was in better shape than it was before, because we now had him and Mr. Wheeler and Giles; also because Giles was to pay to the
232 heirs; while they held the contract they where to deed the lands or pay the money—deeding didn't let them out and also bind Giles.

Q. Did he say why he conveyed to Giles?

A. I don't know that he did.

Q. Didn't he tell you it was for the purpose of bringing the action in the United States court; that Giles was a non-resident of the State?

Objected to. Sustained.

Q. What did he tell you, if anything, about the purpose he had in view of prosecuting this action in the United States court?

A. I don't know that he told me why he made this conveyance.

Q. What did you understand from Mr. Burr?

Objected to. Sustained.

Q. State substantially what Burr said in regard to that matter?

The COURT: State what he said about the particular thing.

The WITNESS: State the question again.

Q. What did Burr say, as near as you can remember, about prosecuting the action in the United States court in the name of Giles?

A. He told me he was rather acting as attorney for Giles; I don't know that he did at that time, but he did afterwards.

Q. Did he ever state to you, that you now remember of, that this conveyance was made to Giles for the purpose of prosecuting the case in the United States court?

A. He never made such a statement to me.

Q. Have you heard any conversation between Giles and Burr & Wheeler and Albert Dawson within the last 24 hours?

A. No, sir; I don't know that I have saw them or heard a word.

233 Mr. WOOLWORTH: You say you are a brother-in-law of Albert Dawson?

A. Yes, sir.

Q. You married his sister?

A. He married my sister.

Q. Do you know A. A. Kniceley?

A. I don't.

ABNER HEATER, sworn on behalf of the defense and examined in chief by Mr. GAYLEY, testified as follows:

Q. Did you ever have any conversation with L. C. Burr about the property in controversy in this suit?

A. Yes, sir.

Q. Where was it held?

A. In Mr. Burr's office.

Q. What was the conversation?

Plaintiff objects.

Q. Did you ever have any conversation as to Burr's interest in this property conveyed to Giles by him and Wheeler?

A. Burr told me that he and Wheeler, or, as he said, "We own two-thirds of the property."

Plaintiff objects; overruled; excepts.

Q. Who did he say owned the other third?

A. He didn't say, that I remember.

234 Q. When did the conversation occur, and where?

A. In his office; couldn't state the exact time; about 2 or 3 years ago.

Q. What led to this conversation?

A. Mr. Oakley——

Plaintiff objects.

Q. State the whole of the conversation you and Burr had.

A. Mr. Oakley asked me in regard——

Plaintiff objects to what Oakley said.

The COURT: State the conversation you had, if you had any, that you have not already stated.

A. I asked Burr if I could dispose of that property in the north addition; he said I could; it was my mother's property. I asked him if there would be any trouble in regard to the property; he told me no. I asked him how he knew so; he said "We control two-thirds interest in the property," and that my mother should not be disturbed, as she could make title, and he would see it was all right, as he controlled or owned two-thirds of the property.

Q. Was that before or after this suit was commenced against Little by Giles?

A. I don't remember when that suit was begun.

Q. Was it before or after controversy arose with respect to title to this land?

Plaintiff objects.

Cross-examination of this witness waived.

R. H. OAKLEY, recalled on part of defense and examined in chief by Mr. GAYLEY, testified as follows:

235 Q. Are you one of the defendants in this case?
A. I am.
Q. Who is the other?
A. Mr. Owen.
Q. Where do the defendants in this case reside?
A. Lincoln, Nebraska.
Q. Where does Little and Alexander and Stewart reside?
A. Lincoln, Nebraska.
Q. State whether or not you ever had any conversation with Burr in regard to his purpose, or the purpose of Burr & Wheeler, in conveying the property in question in this case?

Plaintiff objects. Overruled. Exception taken.

A. I had a conversation with Burr. It was during November or December, as near as I can remember, 1880.
Q. What was that conversation?
A. I hardly know how to make it clear except I explain. We met in the post office, and were standing near the register on the east side of the main delivery. I told him I had an opportunity of making an exchange of some property, and asked him what per cent. of some of this property was in South Lincoln, and wanted to know what per cent. he would expect for a perfect title. I asked what per cent. of the value of the property it would probably take to get a perfect title. Burr said he had not decided on any direct per cent. about the matter, but, pointing out the window, he said: "This property over here we thought we would list for 2,500 dollars, each lot." That was the property on the south side of the square.
It is in suit. He said: "You can judge what per cent. that
236 would be." Somewhere from 25 to 30 per cent. I said I did not want to exchange unless I could be sure I could get a perfect title to the property I had in view. He said yes, but it would take some time. I told him I understood the title was not in him, and asked how he could be sure of that. He said the suit was brought in the United States court, and he could control it, and I must have patience. That was the substance of that interview. There was another interview before this, which must have been in July, 1880. This was in reference to some property owned by Mrs. Heater in South Lincoln. We had a mortgage on the property, and they wanted us to take up our mortgage, and take the property. Heater had a conversation with Burr about it and came to me about it. I said I didn't want the property; there might be some litigation about it, and so forth; and he told me the matter could be fixed

all right, he thought, with Burr. He came and told me he had a talk with Burr——

Plaintiff objects as immaterial.

Q. What conversation did you have with Heater and Burr?

A. The interview took place in Burr's private office. Burr said we could take this property with safety; that Mrs. Heater and Mrs. Dawson were old friends, and that Will. Dawson, on his death-bed, said, "Aunty Heater must not be disturbed." I asked if that could be relied on, and he said, "We control two-thirds of this property."

Q. Who did he say owned the other third?

A. My recollection is that he said the heirs owned the other third, and they would respect William's request enough to fulfill that part of it.¶ I am not swearing positively to the time, but think it was in July, 1880.

237 Q. How much of this property in dispute, which was conveyed to Giles by Burr & Wheeler, is laid out in town lots?

Objected to as immaterial. Sustained. Defense excepts.

Cross-examination by Mr. WOOLWORTH:

Q. You say that at the time of this conversation in Burr's office William was dead?

A. That is my understanding; yes, sir.

Q. Then, if it should turn out that William was not dead, you have got the time too early?

A. I might be mistaken in the year; it might have been 1881, but I think it was 1880.

Q. But it must have been after William's death, for otherwise they wouldn't have used that expression?

A. Certainly. I should say so.

Defense here offers in evidence the record in the case of Giles against Bacon to show that this case was commenced prior to the time that a conveyance had been made, or that they had authority by power of attorney to do anything in the matter. Received for the present.

Plaintiff objects to its reception as incompetent, irrelevant, and immaterial.

Defendants rest.

238 H. H. WHEELER, sworn on part of the plaintiff and examined in chief by Mr. WOOLWORTH, testified as follows:

Q. You are one of the parties to this deed from the Dawsons to Burr & Wheeler?

A. I am.

Q. You are the Mr. Wheeler spoken of so frequently during the course of this trial?

A. Yes, sir.

Q. State in what in what court it was the purpose of yourself and Mr. Burr to bring the actions for the recovery of the premises described in these deeds at the time of the making of these deeds.

Defense objects as immaterial and irrelevant. Overruled. Exception taken.

A. At the time we purchased this property from the Dawson heirs Mrs. Dawson was not married and we had no idea she was ever going to get married, and we had no idea about bringing any suits until she died. Subsequently Mrs. Dawson, to my surprise, got married, during the progress of these negotiations, after we had the signatures of some of the heirs, but Albert Dawson, who lived in the Republican valley, had not conveyed to us then. It was our purpose to bring suits and determine what rights we had and not disturb anybody else. The first suit we commenced *to commence* was a suit against Sherwin, who owned a store opposite the post office. We drew the papers for the district court of Lancaster county, Nebraska. Because he was a poor man we abandoned that suit.

239 Q. Now, at the time of your conveyance—that is to say, the conveyance of Burr & Wheeler to Giles—what was your purpose as to the court in which action should be brought in Giles' name?

Defense objects that it calls for the purpose instead of facts; as incompetent and irrelevant. Overruled. Exception taken.

Question withdrawn.

Q. State whether or not, at the time of the conveyance of Burr & Wheeler to Giles, there was any purpose on the part of yourselves to bring any action in the Federal courts.

A. None whatever.

Defense objects as incompetent, calling for the purpose of the witness instead of facts.

Q. State when it first occurred to you to bring an action in the Federal courts with respect to the time of your conveyance to Giles.

A. I think it must have been—I don't know how long after—it was just before the Bacon suit was commenced, which was the latter part of June, 1880.

The COURT: Was that after the marriage?

A. Yes, sir.

Q. State what suggested to you the idea of bringing the suit in the Federal rather than in the State court.

Objected to as incompetent, not calling for any fact. Overruled. Exception taken.

A. I think the chief reason was seeing a case in the Central Law Journal—the case of Brant against some coal company.

Q. When did you first see the decision?

240 A. It was about that time, but I knew of the case when it was commenced.

Q. State whether or not your attention was drawn to that case at the time you made conveyance to Giles.

A. No, sir.

Objected to as leading and immaterial.

Q. Do you know Mr. Van Dorn, who was on the stand to-day?

A. By sight; yes, sir.

Q. Do you remember the occasion that he speaks of, of meeting you and Burr in the clerk's office?

A. Yes, sir.

Q. Now state what occured at that time and place.

A. Burr and I went to the clerk's office to look after some pieces of this property in relation to the title; Van Dorn was there, and we three stood there; I was looking over the records, and they were talking together; I don't remember the conversation; didn't pay much attention to it.

Q. Did you hear Burr say anything to Van Dorn about who owned or who was interested in the property?

Objected to as leading.

A. I meant to say I don't remember the details of the conversation; I simply remember the fact that they were talking about that; I supposed in a sort of joking, blackguarding sort of a way; I paid no attention to what they did say. I heard nothing said about his owning the property or who did own it.

Q. Did you see Burr produce any paper there at the time and show Van Dorn?

A. No, sir.

241 Q. You can't speak particularly about what was said there?

A. No, sir.

Q. Are you acquainted with Ross, who also testified here to-day?

A. Slightly.

Q. Do you remember the conversation which he testified to?

A. Yes, sir.

Q. Now state whether or not in that conversation you produced and showed to Ross any paper or document.

A. Yes, sir.

Q. What was the nature of that paper?

A. It was the power of attorney that was introduced into evidence.

Q. Executed by Giles?

A. To Mr. Burr.

Q. State whether or not at that time you produced or showed to Mr. Ross any deed.

A. No, sir.

Q. No deed whatever?

A. No, sir; no paper.

Q. Nothing but the power of attorney?

A. No, sir.

Q. Will you state what was said between you and Ross at that time?

A. Ross came and said Albert Dawson wanted to sell his share of the contract for 5,000 dollars and wanted me to buy it; I refused to buy it; told him I couldn't buy it. He said: "You think I want

to get a thousand dollars out of this and go into the grocery business with Dawson; that ain't so; the real reason is that the heirs
242 have become afraid and begin to think that the contract is not secure and the guarantee isn't secure and Albert Dawson wants to sell." He finally asked me: "How do you feel secure for your one-third as to Giles?" I took up that paper and said: "This just as good to me as a deed." Told him that was Giles' name and is read him portions of it and showed him the signatures.

Cross-examined by Mr. MARQUETTE:

Q. You say this idea of bringing suit in this court was formed some time prior to the time of the case of Giles against Bacon was commenced?

A. Yes, sir.

Plaintiff objects to witness being led.

Q. You stated this purpose to commence this case in this court was formed some time before you commenced the case of Giles against Bacon?

A. Yes.

Q. That is the first case you commenced in reference to this property in dispute?

A. That was the first case in which we filed a petition.

Q. How do you commence a case in court?

A. Technically by filing a petition.

Q. Then really this was the first case commenced in court?

A. Yes, sir.

Q. Now, you say you formed that from reading or looking at the Brant case in the Central Law Journal?

A. Yes.

Q. Did you take that journal at that time?

A. I didn't; it came to the State library.

243 Q. When the first number came you saw this case?

A. I don't remember when that case was decided; don't know whether I saw it in a current number or in a back number.

Q. Where did you first see the case?

A. I first saw the case when I was at work in Chicago in '74; that was one of the cases in the office where I was at work—had just been commenced.

Q. That case is reported in 3d Otto, 93 U. S.?

A. I couldn't tell you.

Q. How long before the commencement of this suit had you seen this case of Brant?

A. A few weeks; it was just before we commenced the case in the United States court.

Q. Might it have been as much as 3 or 4 weeks?

A. I think not; I know it was between the time when we concluded not to commence the Sherwin case and commenced the case against Bacon, and that followed right along within a week or so.

Q. Who first suggested the deed to Giles?

A. Mr. Burr told me that Giles would buy the property; I was trying to sell it to somebody.

Q. You were in for selling it all out?

A. Yes, sir.

Q. And your object in selling to Giles was to get rid of the property?

A. Yes.

A. And you made the deed for the purpose of selling the whole property in one lump?

A. Yes.

244 Q. You had already agreed to deed one-third back to the heirs, hadn't you?

A. No, sir.

Q. Give them one-third or the value of one-third?

A. Yes, when we finally recovered.

Q. Did you ever see Mr. Giles?

A. No, sir, not till quite recently.

Q. Didn't know anything about his condition or whether he was prepared to buy anything, did you?

A. No, sir; Burr represented to me——

Q. Never mind Burr. I am asking you whether you knew anything about that?

A. No, sir; nothing personally.

Q. Did you know what relation Giles was to Burr?

A. I didn't at the time Burr said Giles would buy the property; he told me some time afterwards; it was some time during the negotiations with Giles.

Q. Don't you know whether it was before or after the negotiations?

A. It was during the progress of the negotiations before it was completed; there was letters going back and forwards for two or three weeks.

Q. What relation is L. C. Burr to the plaintiff here?

A. All I know is what he has told me; his wife has told me that he is his father-in-law.

Q. How were you to make anything by this transfer to Giles; you had to go on and litigate and you got the $\frac{2}{3}$ before?

A. I only got a third before that of a very questionable title that everybody pooh-poohed me for having anything to do with; I saw it would be very expensive to carry on the matter, and I thought it would be better to get out of the expenses and get a certainty for a smaller part of it.

245 Q. Have you ever paid any expenses for conducting this litigation yourself?

A. I have been away once or twice, and paid my expenses at the time, and it has been refunded, as also the whole of what I paid to the Dawson heirs for the property in the first instance.

Q. Have you ever paid any court fees or depositions?

A. I never paid for any depositions but at Mr. Burr's request; he said he had no money, and I paid Mr. Hastings for serving process in one or all of these suits and for the clerk's fees at that time.

Q. Who paid you back this money?
A. Burr handed it to me.
Q. Mr. Burr paid it back?
A. Yes, sir.
Q. All the expenses, then, that you have paid out so far Burr has paid back?
A. Except for being at Omaha this time.
Q. And except these other little court fees that *has* not been paid you?
A. No, sir.
Q. You say you didn't pay any attention to this conversation between Burr and Van Dorn?
A. Nothing particular; no, sir.
Q. Where was it this conversation took place between you and Ross?
A. In the center of the State library.
Q. What you showed him was the power of attorney?
A. Yes, sir.
Q. How came you with that power of attorney at that particular time?

246 A. I have always had some interest in these proceedings; have drawn most of the papers except what Mr. Woolworth has done, and have had the papers in my possession partly; have been reading and looking at them.

Q. You had this for the purpose of drawing some paper?
A. No, sir; I have kept the paper most of the time.
Q. Were you afraid to trust Burr with it?
A. I don't remember now; I happened to have it at that time.
Q. Why has this power of attorney never been filed for record?
A. Because we didn't wish to quiet the title of anybody on that case; that is why none of the deeds were filed till Albert Dawson deeded property to Goodwin; then, to protect ours, we put all the deeds on record.
Q. This putting on record was done to protect you and Burr as against the heirs?
A. No; it was for the purpose of protecting Giles; I have an interest, of course, in this under Giles; that is, if Giles succeeds, he is to pay Burr and I the value of one-third of the property; so we have an interest.
Q. You and Burr have one-third interest clear of all expenses of these litigations. Did you or Burr consult Giles with reference to the recording of these deeds?
A. We saw in the morning paper that Albert Dawson had made this conveyance to Goodwin, and we put the deeds on record as quick as we could.
Q. You had them here in your possession at that time?
A. Yes; I don't mean I had them in my possession; I think Burr had them in his; they were back and forwards between us.
Q. You made another agreement with the heirs last night, didn't you?

Objected to as improper cross-examination and as immate-
247 rial and irrelevant. Sustained. Defendants except.

Mr. WOOLWORTH: You say you paid some money to the Dawson heirs; how much did you pay to them?

Objected to by defense on ground that it is a new matter.

The court here adjourned until to-morrow morning at 10 o'clock.

Proceedings.

THURSDAY MORNING, *May 18th*, 1882—10 o'clock a. m.

L. C. BURR, sworn on behalf of the plaintiff and examined in chief by Mr. WOOLWORTH, testified as follows:

Q. You are one of the parties mentioned in these deeds that have been introduced in evidence from the Dawsons to Burr & Wheeler and from Burr & Wheeler to Giles?

A. Yes, I am.

Q. And the person who has been mentioned here so frequently in the course of this trial as Mr. Burr?

A. Yes, sir.

Q. What is your business?

A. I am a practicing attorney.

Q. How long have you been engaged in the practice of the law?

A. About 9 or 10 years.

248 Q. Where do you reside?

A. In Lincoln, Nebraska; have lived there for 8 or 9 years; practiced law ever since I have been there.

Q. When did you first commence to practice at the bar of this court?

A. I don't know as I could give the date, but my practice in this court until lately—within the last one and a half or two years have had some business in this court; never had before that.

Q. At the time of the conveyance to you and Wheeler of the premises in question from the heirs of Jacob Dawson, state whether or not you had any expectation of being obliged to institute judicial proceedings for the recovery of the property?

Defense objects as not calling for the facts, as calling for the witness' expectation at a certain time. Overruled. Exception taken.

A. We had no idea then. I might have had in mind the lawsuit way off in the future some time, but it would have been a long distance in the future; when we bought of the heirs we only thought of buying the property; we had no idea of bringing suit for years to come, because when we negotiated for the property we had not heard of Mrs. Dawson's getting married, and we didn't expect she would get married.

Q. State whether or not the purpose of yourself and Wheeler at that time was to bring actions in this court, if you should ultimately do so, for the recovery of this property or any part of it?

Objected to as calling for purpose and not facts. Overruled. Exception taken.

A. I hadn't thought of this court or hadn't any court in mind when we bought that property. I had no intention of bring-
249 ing any suit in any court but the State court, which was the only court I had ever practiced in.

Q. State what was your purpose in that regard at the time of your conveyance to Wheeler and Giles?

Objected to. Overruled. Exception taken.

A. I had no purpose whatever; had no thought or desire of bringing any suit in this court at that time for him or anybody else.

Q. Will you state what induced you ultimately to bring suit in this court?

Objected to by defense as incompetent—not calling for the fact. Overruled. Exception taken.

A. We had drawn a petition, after we had sold this property to Giles, in the State court—the district court of Lancaster county, Nebraska—the court I was familiar with, and the one I was practicing in, and in looking up the law on this question we found this. My recollection of seeing the Brant case was in pamphlet form; we saw that case and it led us to other authorities, and that was what induced us to destroy the petition we were going to file in the State court and bring the case in the United States court.

Q. When was that in respect of time with reference to the time of bringing these suits now pending in this court?

A. It was just prior to the bringing of these suits; I couldn't say just how long, but I know I had drawn a petition and intended to file it in the district court of Lancaster county, Nebraska, and on finding the case reported in 3d Otto and the authorities there cited, and the decisions there, induced us to destroy that petition and bring the case here in this court, and that was the only purpose or object that brought it in this court.

250 Q. State whether or not at that time you had had experience in practicing at this bar?

A. No, sir; I had not.

Defendants object as irrelevant. Overruled. Exception taken.

Q. State what at the time of bringing that suit and at all times prior to that, was your purpose in respect of employing counsel to assist you in prosecuting these actions.

Objected to as irrelevant.

A. We had no intention of employing counsel whatever; after we brought the case in the Federal court then we thought we ought to employ counsel who had had practice in this court and who was familiar with the rules and practice of the Federal court.

Q. Who then did you employ?

A. We employed Mr. J. M. Woolworth.

Q. How long was that before suit was brought against Little?
A. That was just prior to it; I know I drew the petition in the Little case.
Q. Not to exceed a week, was it?
A. A very short time.

Objected to as leading.

WITNESS: Just a few days; I know I came here and employed you, and immediately we drew the petition and filed it.

Q. I wish to see the deed made by these gentlemen to Mr. Giles.
A. I have it; it is the original.

Witness produces the deed.

Q. I observe that the date of this deed is 27th April, 1880, while the acknowledgment of it by Mr. Wheeler, yourself, and your
251 wife was the 11th June, 1880. Will you please to state how it happened that the date of the deed and the date of the acknowledgment don't agree.
A. I corresponded some time with the plaintiff about this matter, Mr. Giles; about the matter of his purchasing this property from Burr & Wheeler, and the letters that would come to me would express——

Defense objects to witness stating contents of letters.

WITNESS: Giles refused to take this property for some time; refused to buy it; refused to go into it unless I could point out to him where there was some chance of his making some money, or saving himself for the expenses he was paying out——

Defendants object that what Giles said is incompetent, and ask to have the same stricken from the record.

WITNESS: About the 11th of June, or perhaps prior a day or two thereto, it was fully understood and agreed between Giles and Wheeler and myself that he would buy this property; then we made these deeds; that deed is in the handwriting of Frank Sheldon, a clerk that was working for me; it was not drawn by me; my recollection is I told him to draw it on the receipt of some letter from Giles; I corresponded with Giles about this from some time in March or April till July before this sale was consummated.
Q. That is the reason why the date of the deed and the date of the acknowledgment disagree?
A. Yes; it was drawn at the same time, but not acknowledged till then.
Q. After the deed was acknowledged, what did you do with reference to its delivery to Giles, if anything?
A. My wife, his daughter, was going to make a visit to her parents——
252 Q. State why she designed to make a visit at or about that particular time.
A. She hadn't seen them for some time and she wished to visit

them; it was understood between us that when she came up she should bring this deed here, and when she came up she brought this deed.

Q. When did she leave?

A. She left my home in order to get there June 13th, her mother's birthday; it was June, 1880, just following the acknowledgment; she took the deed with her; I fix that date by her mother's birthday.

Q. Who paid the expenses of these litigations in the first place?

A. I have paid them all as fast as any demands by officers or printers has been made; I have paid them and taken receipts for them.

Q. State whether or not you have been reimbursed *that* by anybody. If so, by whom?

A. Ezekiel Giles has paid every cent of it back to me; the plaintiff in this case has paid it back to me the same as any other client.

Q. Before or after the filing of this bill?

A. Why before; he has paid me everything on demand, any time.

Q. State whether or not you ever paid to the Dawson heirs in money anything on account of this property.

A. Yes; I did.

Defense objects that there is a contract stating just what the arrangement was about payment.

Q. How much?

[A.] Two hundred dollars in cash.

Q. You know the witness, Heater, who testified here?

253 A. Yes; I have known him for several years.

Q. Did you hear him testify?

A. Yes; I did.

Q. Do you remember the conversation of which he spoke as having had with you?

A. My recollections are that he spoke of two conversations.

Q. Do you remember two?

A. He swore about two conversations. I can remember something about the conversations. I remember the first one, I think, better than I do the last one.

Q. State when and where the first conversation took place.

A. The first conversation was had before we had sold this property to Giles.

Q. What was said?

A. I don't remember of telling him that Mrs. Dawson and his mother were old friends, because I don't know as I ever knew of such a fact. He asked me about this property in South Lincoln. I told him there was no lawsuit over South Lincoln or wouldn't be; that the suits, whenever brought, would be brought on the stores on O street; we would pick out men who were wealthy and had made their money, many of them, by litigation, and would fight those men, but didn't propose to sue or fight anybody who lived in South Lincoln.

Q. State whether or not you said anything about your owning

two-thirds of the property and the heirs the other third in this conversation.

A. No, sir. I told him, if anything, that while Burr & Wheeler owned that property, I might have said that I owned it
254 while Wheeler and Burr owned it; it was their property. I never said that the Dawson heirs owned any of that property, because I knew they didn't. We bought the property of them at a fair sale, giving them what we called a big price for the title to the property. We knew their title wasn't good for anything unless we could make it good by litigation. I tried to sell a part of this property to E. E. Brown——

Q. Now the second conversation with Heater.

A. The second conversation Mr. Oakley came up to my office with him, and Oakley told me that he was going to buy some of this property and wanted to know if I thought we was going to get it if Giles would be successful in this suit. I told him I thought he would; that I had great confidence in the case and had spent a good deal of time on it. I told him I might be prejudiced, but I believed Giles would win this suit and would certainly get the property, and I told Oakley I thought he ought not to buy it. He asked me, in a very confidential way, about my opinion, and I told him to go to Marquette; he was attorney on the other side, and could give him more consolation than I would. I told him Giles would certainly get the property, and wanted to know something about if he could, and he came to me to find out, and I told him I thought Giles owned the property and would certainly get it. He told me he had W. W. Wilson on a warranty deed back of that and said he thought we would be beaten, and then, secondly, he had a warranty on Wilson on his warranty deed to Bacon.

255 Q. You heard Van Dorn testify?

A. Yes, sir.

Q. Do you remember the occasion which he speaks of as having had a conversation with you?

A. Yes; I can remember that conversation; I can remember the time very well.

Q. State what that conversation was.

A. There has been so many persons talked with me about this will suit that it is hard for me to tell just what was said; I remember Van Dorn coming to me——

The COURT: Was that in the clerk's office?

A. Yes, sir; I told him he needn't worry about his property being sued. He said he had heard we was going to bring an action against his land. I told him he needn't worry about that—we wouldn't; it would be a long while before the present suit that was then pending would be determined, and he needn't worry about any immediate lawsuit being prosecuted against him.

Q. State whether or not you said anything to Van Dorn at that time with reference to your owning this property.

A. No, sir; I couldn't have said anything about that, because I didn't own it; didn't claim it at that time and didn't say so to him.

I knew at that time Giles was the absolute owner of that property and I could not have said that I owned it.

Q. State whether or not you said anything about having made a transfer to Giles in order to bring suit in the Federal courts.

A. I couldn't have said that, having had no conversation with any person about our transfer to Giles; no one talked to me about
256 that; their talk was about their property that they claimed to own. Van Dorn talked about a suit that was going to be brought against him; said he didn't want to have any litigation, and wanted to know if I couldn't get Giles to give him a deed for Giles to sell to him. I told him we couldn't till matters were determined so we knew whether Giles owned the property or didn't. I refused to enter into any negotiations with him to get him a deed.

Q. Do you remember a conversation with Albert Dawson referred to by him when on the stand with respect to this matter?

A. In the indefinite way he put it it would be hard for me to remember. I have had many conversations with him about this series of suits. I have talked to him a good many times about this will suit, as we call it.

Q. Did you ever tell him that conveyance was made to Giles for the purpose of enabling suit to be brought in this court?

A. No, sir; I never did. I never talked with him about these suits; never saw him personally to talk about these suits till the deed was given. He moved into the Republican valley, 200 miles from Lincoln, and I hadn't seen him for years or talked with him till after the decision of the Supreme Court in the Little case; then he moved back to Lincoln with his mother, and I hadn't seen him till after the decision of the Supreme Court construing the will in their favor.

Q. Did you ever have any conversation with Giles about the court in which these suits were to be brought prior to the making of the deed to him?

A. No, sir; the only conversation I had with him, or
257 negotiation, was to induce him to buy the real estate.

Q. What was this title worth at the time you bought the property from the heirs, situated just as it was and the title being in the condition that it was?

Defense objects as incompetent, proving value of the title to the land; it must be the value of the land or some interest in the land.

Question withdrawn.

Cross-examination by Mr. MARQUETTE:

Q. When did you come to the conclusion to buy this property?

A. I think we come to the conclusion of it some time before we got the deeds.

Q. Some time in '79?

A. I know it was before Albert Dawson went West, and don't know just when that was, but know when the deeds were made by him he was out West.

Q. You had no idea that there would be any lawsuit, except in the future?

A. Yes. At the time we concluded to get this property Mrs. Dawson was not married and had been a widow for 10 or 12 years, and I had not heard of her intention to get married. I supposed she would live and die a widow. The deed is dated Sept., 1879, and acknowledged in February, 1880.

Q. Before this was acknowledged the old lady married; when did she marry?

A. She married after the deeds were executed.

258 Q. Didn't she marry in November?

A. I think she was married before that.

Q. Wasn't she married in November, 1879?

A. No, sir; my recollections are that she was married after the execution of these deeds.

Q. That is, after February?

A. Well, I ain't going to testify to that date, because I don't know, but my best recollection is she was married after that.

Q. After February, 1880?

A. I wouldn't say that she was.

Q. You wouldn't say but what she was married before the deeds were actually executed, in February?

A. That may be the fact, but the agreement between Wheeler & Burr and the Dawson heirs had been made long before we knew anything about it.

Q. It was made before she was married, but was acknowledged after she was married?

A. I don't say it was. I can tell you if you tell me when she was married.

Q. She got married in November, '79.

A. I don't think she did; I don't know; I know when we entered into this agreement.

Q. You had no idea that she intended to get married at the time you executed these deeds?

A. I heard she was going to get married about the time she did get married. I understood that from her children.

Q. Were these deeds delivered before or after they were acknowledged?

259 A. After they were acknowledged.

Q. These deeds were delivered to you after they were acknowledged?

A. Yes, sir; I think think they were; some of them were acknowledged in one place and delivered, and then we had to send it to another place and they had to send it back.

Q. Were they different deeds or only one deed?

A. There were two; but they were acknowledged by different officers in different counties.

Q. Two original deeds to you?

A. Yes, sir; the Knicely deed was acknowledged by Mrs. Knicely and her husband in Lancaster county, and the same deed acknowledged by Albert Dawson and wife in Furnace county.

Q. You commenced looking up this matter pretty early—the matter of the law on the question?

A. For a long time when I saw any will case that I thought bore on this will I jotted it down.

Q. Had you ever looked into the United States Supreme Court reports before this; had you looked into any reports at all before you commenced suit?

A. Yes, sir; we did.

Q. I understood you to say you drew up a petition and then afterwards commenced looking up the law in the matter?

A. No, sir; you didn't understand me correctly.

Q. You said you drew up a petition and then, after looking over the law, you concluded to commence in this court instead of the State court?

A. I said, after I drew up a petition in the State court, but before I filed it, we found the Brant case.

260 Q. After you drew it up and before filing it?

A. Yes, sir.

Q. How long do you usually keep a case before you file it?

Objected to.

Q. Might you not be mistaken; might you not have looked this up before any petition was drawn?

A. No, sir; I know the finding of the case induced us to stop proceedings in the Lancaster county district court of this State and begin the case in the Federal court.

Q. You have stated that was quoted in third Otto?

A. I think it is.

Q. When did you first find that out?

A. I can't tell; I know I saw it in some law magazine; — is the first I ever saw of it.

Q. You never saw it in third Otto?

A. I have since seen it and read it over a good many times.

Q. That is Brant against the Virginia Coal and Iron Company?

A. That is the case; yes, sir; the first I ever saw of the case was just about the time we were preparing to bring this case in the State court.

Q. After the petition was prepared?

A. Yes, sir.

Q. You never filed that petition?

A. No, sir; that case was against a man named Sherwin, if I recollect rightly.

Q. Now, how long was that before you commenced these cases—the Little case?

261 A. Just before.

Q. The day before?

A. Just before we commenced the Bacon case; can't say just how long; it was prior to that a short time.

Q. Was the Bacon case the first case you commenced with reference to this property you deeded to Giles?

A. That is the first case we filed in the circuit court.

Q. Was it just before that case or the Little case?

A. Just prior to the Bacon case, I think.

Q. You stated you employed Mr. Woolworth just before the Little case was commenced, or was it before the Bacon case was commenced?

A. I think we filed it the same day I came up to Omaha or about that time; I came here and saw Mr. Woolworth; it was about that time.

Q. Was that the Bacon or the Little case you filed the same day you saw Mr. Woolworth?

A. I don't say I saw Mr. Woolworth on the same day I filed the petition.

Q. What case?

A. The Bacon case.

Q. Don't say you saw him before filing that case at all?

A. My recollections are I did not.

Q. That you filed that by yourself, Burr & Wheeler; Woolworth was not in the case?

A. Yes; he was in the case, but after it was commenced he advised us to dismiss that case or advised us to change the petition.

Q. You didn't consult him when you commenced that case of Giles against Bacon?

A. My recollections are that we had not; it was just about
262 the time that we commenced the case that we employed him; just how long I can't say, but it was shortly after.

Q. This commencement of the Bacon case; you had seen this decision just before that; now, in the date of this deed you say there was nothing finally made between you and Giles about this property until about the 11th of June.

A. I knew before June 11th; my wife had——

Q. In the direct examination you said there was nothing finally agreed on till 11th June.

A. It was well understood between Giles and Burr & Wheeler before June 11th; the last letter I got from him ended it; that was a short time before June 11th, because on that letter my wife went up to Iowa, where they resided, and we acknowledged the deed.

Q. You stated she took it there.

A. Yes, sir.

Q. She brought the deed back with her?

A. I think she did; I can't remember whether it was mailed back to me or whether she brought it back; I think she brought it back with her; she was there about a month.

Q. Have you had the deed in your possession ever since?

A. Wheeler and I together have; I have had it most of the time in my safe.

Q. Was that deed recorded?

A. The dates will show some time in January, 1882, I think.

Q. When was your deeds from the Dawsons recorded?

A. The same time.

Q. January, 1882?

263 A. Yes, sir.

Q. When you got this of the Dawson heirs you had no idea of selling it at that time again?

A. No, sir; I don't believe I did. William Dawson urged I should buy it—almost crowded it onto me. I bought it because I thought there might be something in it.

Q. Where did you pay Dawson for that deed?

A. I can tell where I paid 100 dollars of it.

Q. Where?

A. He bought a span of black horses of somebody at that time, when he was living in Lincoln, and I paid him 50 dollars at one time and 50 dollars at another. I done this to William R. Dawson, and Albert Dawson when he was there; they were the oldest boys, and I done it with them.

Q. Haven't you had a good deal of dealings with them?

A. No; I have with their mother.

Q. Didn't you owe her for land at that time?

A. I didn't owe Mrs. Dawson a cent at that time; I didn't owe her for any land or anything I had bought of her at all; I only bought 3 lots of her at any time.

Q. You still thought after deeding to Giles that you had an interest in this land; you still thought after you had sold this to Giles and got these contracts that you still had an interest in this land?

A. No, sir; he owed me so much money; I hold his contract.

Q. You heard Wheeler state he thought this power of attorney was as good as a deed from Giles; you didn't think it was?

A. I didn't hear him so testify.

264 Q. You didn't think putting it back into your possession was as good as a deed; you had it all under your control?

A. No, I had no such idea.

Q. Had no idea you had any control over it?

A. I had a positive idea I would never deed any of that land to me by that power of attorney at all.

Q. You had an idea that you had no control over the property at all?

A. Only for Mr. Giles.

Q. As a fact, didn't you have the absolute control over it?

A. I never exercised any control over it.

Q. When you got possession of it wouldn't you have absolute control over it?

A. I have no interest in the real estate whatever.

Q. Did you make a deed to Kinsell of this property?

A. No, sir.

Q. You made no deed to this property?

A. No, sir; I have made some as attorney-in-fact for Ezekiel Giles.

Q. You didn't consult him about it, did you?

A. No, sir; you had brought an Iowa man in for the purpose.

Q. Hold on, Mr. Burr; the question is, didn't you deed under this power of attorney some land without ever consulting Giles; some of this land in dispute?

A. I gave a deed to one Kinsell, who was a resident of the State of Iowa, that you claimed to be attorney for; he said you was not

his attorney, and I settled it up with him, his part of that land, and gave him a deed, acting under the powers in that power of attorney, and it was a very good thing I had the power of attorney.

265 Q. I asked you if you consulted Giles in that transaction?

A. If I didn't beforehand I did immediately after; I told him—reported it. I can't remember that I wrote a letter before or after, but know I told him, but can't tell when I told him.

Q. Couldn't tell whether you consulted him before or after?

A. I shouldn't have waited to consult him; I wanted Mr. D. C. Kinsell out of that case—that you said you was his attorney.

Q. You say this conversation with Heater never took place—that is, that you never said what Heater said you said in reference to being the owner of this land?

A. I think, while Burr & Wheeler were the owners, or the owners of the property, I had a conversation with him and told him I was.

Q. What was the date of that conversation? It was some time after he and Oakley were there.

A. They were there at the time Oakley was to buy this property; that was a different time.

Q. How far was it from that time?

A. It is hard for me to locate that time. I take Heater's statement that it was 2 or 3 years ago; he ought to remember it better than I can. I think it was between the time the heirs had deeded to us and we had deeded to Giles.

Q. You think it was before June, '80?

A. Yes; I think it was; yet I haven't hardly any idea when that date is or when that conversation was. I remember the other conversation, when they came into the office.

Q. You say that Giles has paid you back what expenses you have paid?

266 A. He has paid all of the expenses; I have not paid a cent of them.

Q. How much has been the expenses up to date?

A. I don't know.

Q. About how much expenses have you paid in these suits?

Objected to by plaintiff.

A. I can guess at it; 100 dollars. I can't say—maybe more. Printing of briefs in the circuit and supreme courts——

Q. It is about 100 dollars then you have paid up to this time?

A. I paid the clerk and the marshal some fees, and those we got back by an execution.

Q. How much has Giles paid you back of this 100 dollars?

A. Giles paid me more than 100 dollars.

Q. How much has he paid you?

A. Well, I got 200 dollars at one time in cash.

Q. When was that?

A. That was about the time the Bacon suit was dismissed.

Q. Is that all?

A. I got some paper out of that, out of which I got some more money.

Q. Paper due him?
A. That was about the same time; it was his paper.
Q. Who was it due from?

Plaintiff objects. Overruled. Exception taken.

A. That was a tax certificate that I got from W. W. Wilson.
Q. This money you got out of this tax suit case, out of this property in dispute, didn't it?

Plaintiff objects.

267 Q. How much money did you get out of this matter?
A. I think the total I got out of that was 496 dollars that I eventually got out of the dismissal of the Bacon suit.
Q. This included the 200 dollars you got of Giles?
A. Yes, sir.
Q. That is, you took out of the 496 this 200 and paid expenses; you only sent Giles 290 of it?
A. I didn't send him any; I passed it to his credit; and whenever any expenses were to be paid here they were paid.
Q. The costs were paid out of that money?
A. Yes, sir.
Q. Did you have any conversation with Mr. E. E. Brown about this matter just before you commenced these suits, or just about the time, or before you got the conveyance from the Dawson heirs?

Objected to by plaintiff.

Q. Didn't you, in Brown's office, 2 or 3 days before the date of this deed to you and Wheeler from the Dawson heirs, state to Mr. Brown that you had a party living in Iowa in whom you could put the title of this land, so as to commence suit in the United States circuit court?
A. No, sir; you have got the time way off. I had two conversations, I think, with E. E. Brown——
Q. You say that Brown is mistaken in the time of this conversation?
A. I don't know that Brown asserts this.
Q. You say this, or not, as to time?
A. No, sir; I say I had a conversation at that time, but not such a one as you relate. I tried to sell him some of this property, and he wouldn't buy it.
268 Q. Didn't you say to Brown that you had friends in Iowa that you could transfer this property in dispute to to bring the case into this court, in either one of these conversations that you have alluded to—you have related two conversations?

Mr. WOOLWORTH: I object, unless the time and place of the conversation is defined in the interrogatory.

Q. What time did you have this conversation with Mr. Brown?

Objected to by plaintiff.

Q. At the time of the first conversation you had with him?

A. No, sir; I had no conversation with him the first time you speak of.

Q. Then the second conversation. In the second conversation you had with him, didn't you state that you had parties living in Iowa to whom you could convey the property in dispute, so as to bring the suit in the circuit court of the United States, or words to that effect?

Plaintiff objects that there is no time or place fixed at which this conversation took place.

Q. What was the time of your second conversation?

Objected to by plaintiff.

Q. Mr. Burr, at the time you had this second conversation which you speak of with Brown at his office, didn't you say to him that you had a party living in Iowa to whom you could convey this property in dispute and bring this case in the circuit court of the United States?

Objected to by plaintiff. Overruled.

A. I never had any conversation with Brown in his office about a party living in Iowa to whom I could convey this property to bring the case in the United States court.

Q. Never had any such conversation at all?

Plaintiff objects.

269 Q. Did you ever go with Mr. Reavis from Nebraska City to Factoryville?

Mr. WOOLWORTH: We object as improper cross-examination.

[A.] ———.

Q. In going with Mr. Reavis from Nebraska City to Factoryville, in this State, on the 26th of April last, in speaking to him with reference to this property in question in this suit, did you not say to him at that time and give it as your opinion that if the fight went on with the Dawson heirs the truth would come out and Giles would lose his case in the Federal court, as the property had only been put in his name (Giles') because he was a non-resident of the State and could bring the suit in this court?

Mr. WOOLWORTH: We object on the ground that whether he did or not it is not a material issue in this case, nor does it go to sustain these issues. Objection overruled. Exception taken.

A. Did he tell you that I said so? I went to Nebraska City with Mr. Reavis in a buggy. He was an attorney against me and I was very guarded in what I told him, and told him no such thing as you say. I was very guarded with him on purpose because he was an attorney against Giles' interest and against me.

Q. Didn't you say to Mr. Reavis when he and you were going from Nebraska City to Factoryville on the 26th of April last, in answer to the question by him, why you and Wheeler didn't select some other person than your father-in-law, outside of the State, to

convey the Dawson property to, that you did it because you knew Giles, and that he was all right, and that you could trust him and that he would do just what you said for him to do?

Objected to by plaintiff as immaterial and incompetent.

270 A. I went to Factoryville at his suggestion to try and make a settlement of this Dawson's heirs' claim against Giles, but I had no such conversation with Reavis as you relate. I told Reavis distinctly that if the heirs would go onto the stand and swear to the truth there would be no difficulty about this case.

Q. Wasn't it at your suggestion that he went with you?

A. No, sir; he made the proposition himself; I may have urged it; I expect I did; the proposition was made, and accepted by me to go down there; I was anxious to go, of course.

Q. Did you not at the same time and place, on the way from Nebraska City to Factoryville, and in the same conversation, say to Reavis that you had full control of the entire business, and that it was unnecessary to wait instructions from Giles in any matter concerning the compromise with the Dawson heirs, and that he, Giles, had nothing to do with it, but must consent to anything you might do, as you and Wheeler had dug up the case and he was acting only as a convenient third party out of the State to hold the case in the Federal court?

A. Can't I see the letter you are reading from?

Q. No; all you are to do is to answer the question.

A. Your honor, he is reading from a letter that may be my own letter; can't I see the letter, your honor?

The COURT: You can't do that.

WITNESS: I told him no such thing; I had no such conversation with him.

Q. At the same time and place, didn't you say, when Reavis asked you why it was so necessary to hold the case in the Federal court, that you and Wheeler would stand no show in the State court on account of political influence and money pressure in Lincoln; that
271 some of the B. & M. officials owned part of the Dawson estate and that they would use the strength of the company to influence the court, and for this reason you had put the property in the name of Giles, who could sue in the Federal courts?

A. I said no such thing, sir. I had no such conversation with Reavis at all.

Q. Didn't you say to Reavis in the clerk's office in the Commercial Hotel at Lincoln, Nebraska, on the evening of the 21st of February, 1882, when you had heard that the Dawson heirs had filed a cross-bill in the case commenced by you and Wheeler and Giles and the Dawson heirs, that unless the Dawsons could be induced to withdraw that paper Giles would be beat, as he really had no interest in the property, and was only the nominal party; that the case could be prosecuted in the Federal courts?

A. Wheeler and I had a conversation with Reavis in the Commercial Hotel on that date, I think. I had no such conversation with

him, and the writer of that letter ought to know it. No one was present at that conversation but Reavis and Wheeler and myself; Reavis was then acting for the heirs, as I understood it, adversely against me.

Q. Didn't Mr. Reavis ask you in the conversation which you had between Nebraska City and Factoryville why you and Wheeler took the property in your own name if you in fact was to litigate concerning the title in the Federal courts, and didn't you reply that you ought to have done that in the first place, but that you hadn't thought of it, and besides you didn't understand the ropes then as well as you do now, and didn't Reavis ask: How will a set-
272 tlement with the Dawson heirs keep the case in the Federal courts? and didn't you reply that a fix up with the heirs would keep them friendly, and no one else knew how Giles held the property?

Plaintiff objects that any conversation had must have been had while there was an attempt to make a settlement by the heirs; if any admissions were made pending settlement it would not be admissible here in this case. Objection overruled. Exception taken.

A. Reavis and I went there, and our talk and conversation was about how much these Dawson heirs ought to have and how it should be secured. Nothing else was talked of between us, except in a very general way about this remand and this plea in abatement, and he told me then and yesterday that it was utterly impossible for this plea in abatement to be sustained; he told me then that this plea in abatement could not be sustained.

Q. We only ask you about this conversation.

A. I had no such conversation as the writer of that letter has intimated to you—I see you are reading from a letter—and I don't know anything about it. There was nobody present on this talk going to Factoryville but Reavis and myself, and we had some very general conversation about this plea in abatement.

Q. What is your answer to my question?

The COURT: He answered that; he said there was no such conversation.

Q. Didn't you at this same time, in going from Nebraska City to Factoryville, say that they, referring to the Dawson heirs, knew that you and Giles were the same as one, and that whatever you
273 told Giles to do he would do it and ask no questions; that he, Giles, was acting as you said, and not you as he said, and that you knew the Dawsons well, and that if they were friendly the opposition could get nothing out of them?

A. Some man's imagination had a wonderful stretch when he wrote those questions. It is the purest make-up on the part of the writer of that letter; it is wholly untrue; there ain't any truth in it. I was guarded in my conversation with that man; I had reasons for it, too.

Q. Didn't Mr. Reavis say to you in the same conversation between Nebraska City and Factoryville, "Burr, you have done this business like a fool," and didn't you reply, "I know it, but how can a fellow

think of everything at once; but it is all right anyhow if you will help to keep the Dawsons right?"

A. Reavis never called me a fool or I would have knocked him down, or attempted to.

Q. You don't knock everybody down that calls you a fool, do you?

A. Well, no, but we didn't have any such conversation at all; the man's mind was diseased that wrote that letter.

Q. You have since fixed up with the Dawson heirs, haven't you, since the commencement of this trial?

Plaintiff objects. Sustained. Defense excepts.

Redirect [by] Mr. WOOLWORTH:

Q. You were enquired of about a power of attorney from Giles to yourself. State the circumstances of the execution of the power of attorney; why did you get it?

Defense objects that they called out nothing in reference
274 to this matter. Objection overruled. Exception taken.

A. My recollection is that Little and Alexander both came to me with propositions for settlement of this matter to buy Giles' title, and in the course of that conversation they said——

Objected to as not re-examination. Overruled. Exception taken.

WITNESS: Little and Alexander said in that conversation that there was no such man as Giles; that there was no such person in fact. I didn't know but some man might question my right to bring any suit, or of having anything to do with him, and I wanted that power of attorney—that was one of the objects which got it.

Mr. MARQUETTE:

Q. When was this conversation with Little?

A. I can't remember when it was; he heard about these deeds and came to see me about it.

Q. He heard about your having a deed and having deeded it to Giles?

A. Yes, sir.

Q. It was long after he heard about your having deeded to Giles? How long was this after you had commenced suit against Little that you had this conversation?

A. I can't remember the time; I know the fact; I couldn't state the time when it was.

Q. It was after you commenced suit against him, wasn't it?

A. No, sir; it was before then; it must have been before then; I can't tell just when it was; I know they disputed there was any such man as Giles.

Q. How long was this after you commenced suit against Little?

275 A. Long before that, I know.

Q. How long was it before that?

A. I can't tell you.

Q. Was it a week?

A. I should say it was a good deal more than a week.

Q. Was it two months?

A. I don't know. I know they came to see me several times, and I heard it was said there was no such man as Giles; my recollections are that Little and Alexander both mentioned it.

Q. How long were these matters talked about before you thought of getting a power of attorney?

A. I can't tell you.

Q. Was it two months?

A. I couldn't give you any recollection of that time or date. I can't tell.

Q. Was it two or three months?

A. The best idea I can give you is that I have got no recollection of the time or date. I know the fact of their approaching me, and they said there was no such man as Giles. I know several men intimated that to me.

Q. And you wouldn't have got the power of attorney at all if they hadn't done this?

A. I think I should.

Q. Didn't you say that was how you came to get it?

A. No; I said that was one of the reasons.

Q. I thought you answered it was because Little said there was no such man as Giles.

276 A. I can't help what you think.

Q. You didn't say that, then?

A. This is a side track we are on in this case, and is something I didn't impress my mind with, and didn't think any such thing would be here.

The court here adjourned until 2 o'clock p. m.

Proceedings.

2 O'CLOCK P. M.

EDWIN J. MURFIN, sworn on behalf of the plaintiff and examined in chief by Mr. BURR, testified as follows:

I reside in Nebraska city; am an attorney and counsellor at law.

Q. Did you hear the evidence of Mr. Ross, witness for defense?

A. I did.

Q. Do you remember the time when that conversation as related by him took place?

Defense objects that it is not shown witness was present.

Q. Did you know Mr. Ross?

A. I didn't know him when I saw him, but I became acquainted with him.

Q. Do you know Mr. Wheeler?

A. Yes, sir.

Q. Was you present at the conversation?

A. I was present at the State library; can't say the month;
277 it was either [the] latter part of last or first part of this year.
A gentleman came in and asked where Mr. Wheeler was. He was in Guy Brown's room, and I called him out. I heard the man say, I am Mr. Ross. They stepped back of Brown's desk, and they had a conversation. I was on the other side of the partition and heard the conversation. My attention was particularly called to it because they spoke of the Dawson matter.

Q. Did you hear any conversation between Ross and Wheeler about it—about any deed?

A. I heard nothing said in relation to a deed at all.

Q. Can you state what the conversation was between them?

A. The conversation lasted some half to three-quarters of an hour. When Ross first came in he said: I want to find out what the condition of this Dawson case is. Wheeler commenced to explain what had been done, and in the course of the conversation Wheeler wanted to know what he wanted to know about it; Ross said the heirs were finding fault with their security on the contract—on the contract entered into between the Dawson heirs and Burr & Wheeler.

Q. What did Wheeler say to him?

A. I don't remember precisely the remark he made in relation to the security other than this, that he supposed it was all right; they appeared to be satisfied with it and he, Wheeler, was satisfied with it, and that they had sufficient security.

Q. Did you see any paper exhibited by Wheeler to Ross?

A. I couldn't see them because I was rather catacornered from where they were; they were back of the desk and I was sitting on the other side of the partition; I couldn't see them, but could hear what they said. I heard them converse about a paper. When
278 they had the conversation about the security, and he said the heirs were not satisfied with the security, something was said by Ross as to whether Wheeler was satisfied with the security; Wheeler said, I have got something that secures me; they had some further talk and Wheeler said, "This is as good to me as a deed would be from Giles," or words to that effect.

Q. Was that all that was said about that paper?

A. There was nothing more particularly said in relation to the security business.

Cross-examined by Mr. MARQUETTE:

Q. When Wheeler said, referring to a paper, that this was as good to him as a deed from Giles, he referred to a paper he had in his hands?

A. I couldn't see, but I should infer that.

Q. He was referring to a paper then in his possession?

A. I should infer so.

Q. He said that paper was as good to him as a deed from Giles?

A. Yes; or words to that effect.

Q. Was there anything said in this conversation about why this deed was made to Giles?

A. Not at that time that I heard; I have no recollection of any-

thing being said at that time. I may perhaps be a little confused in regard to two conversations, one that I had and the other that I heard. I don't remember whether anything was said about the deed, or the reason for conveying to Giles in the conversation between Wheeler and Ross, but my impression is that was in a conversation I had personally with Dawson, but I am not certain with regard to it.

Q. What was said in that conversation about why it was deed[ed] to Giles?

279 Objected to as not proper cross-examination. Objection sustained. Exception taken.

EZEKIEL GILES, plaintiff, sworn in his own behalf and examined in chief by Mr. WOOLWORTH, testified as follows:

Q. You are the plaintiff in this case?

A. I am, sir.

Q. When did you first hear about this property?

A. The first I heard of it was some time in the winter of 1880.

Q. When did you commence negotiations for the purchase of it?

A. In the fore part of 1880; can't tell the exact month.

Q. Was the deed from Burr & Wheeler to yourself ever delivered to you?

A. Yes, sir.

Q. When?

A. I got that deed about the 13th of June, 1880.

Q. State whether there was ever anything said between you and Burr & Wheeler with reference to the court in which these cases, or any of them, were to be brought.

A. There was not, sir.

Q. State whether or not that matter was in your mind at the time you made this transaction, in June, 1880.

A. My opinion was it would go into the State courts, and in case there was a fight it would have to work its way up.

Q. State whether or not there was any purpose on your part at the time you acquired this title to have any action or actions brought in the Federal court.

280 Objected to as calling for the purpose of witness and not facts. Overruled. Exception taken.

A. There was not, sir.

Q. State whether or not there is, or at any time ever has been, any agreement between you and Burr & Wheeler, or any of the Dawson heirs, not expressed in the writings that have been introduced in evidence.

A. No.

Q. State whether or not there is or ever has been any understanding, directly or indirectly, between you and them or any of them that you would convey to them any part of this property when you shall recover it in these actions.

A. There has been no such understanding, neither written nor intimated in any shape or form.

Q. Between you or any of these parties?

A. Between me or any of these parties.

Q. Has there ever anything been said between you and any of them on that subject?

A. Not a word.

Q. Do you know Mr. Gayley?

A. I think I saw him at my place once. I take him to be the gentleman.

Q. You heard him testify yesterday?

A. Yes, sir.

Q. You remember the occasion of which he spoke when he had a conversation with you?

A. Yes, sir.

Q. Mr. Giles, I want you to go on and state all the circumstances of conversation, and all that was said by you and any of the
281 parties present at it?

A. The conversation with Mr. Gayley.

Q. Yes; in the first place, I wish you to state where that conversation took place.

A. It took place at my home, in Clay county, Iowa.

Q. Fix the time as near as you can.

A. I can't fix the date.

Q. Was it in the summer or winter?

A. No; it was in the winter. I don't know as I can fix the date.

Q. Was it warm weather or cold?

A. It was cold weather.

Q. Do you know how Mr. Gayley came out there?

A. He came out there in a carriage—it must have been a buggy.

Q. Was the conversation in or out of the house?

A. Outside.

Q. Who was present at that conversation?

A. There was some man—I took him to be the hostler from town that brought Mr. Gayley out there—and there was some women folks inside the house.

Q. You three were the only persons present?

A. Yes, sir.

Q. How long did that conversation last?

A. Not very long; maybe 15 minutes in all.

Q. I wish you to state what was said; who opened the conversation.

A. Mr. Gayley came there and asked me, with a good many airs, if I knew certain individuals; one was Mr. Goodwin. I sup-
282 posed he was some man that had come into the country that knew there was some such a man there; it is a new country there, and people are coming in every day, and we don't know all the people that come in. I told him I knew a man named James Goodwin, who lives about 8 miles from town; he said he wasn't the man. He then enquired for another individual, and I didn't know him. Then I asked him what he was driving at—that is, I exhib-

ited some suspicions; wanted to know to whom I was indebted for the honor of the visit, and he told me he was Mr. Gayley from Lincoln, Nebraska, and wanted to know something about the property down here.

Q. What property; about the place where you live?

A. The property down here at Lincoln? I didn't intend to be very communicative to him, and perhaps, under the circumstances, I didn't make as clear a case as what he wanted. He asked me certain questions; among others, he asked me if I had some property here. I said there was some here in litigation. Among other things, he asked me if this was brought in my name for the purpose of carrying it to the United States court.

Q. What did you say to that?

A. I told him emphatically no, because it was true. I could have no possible object of telling *of* him anything else, from the fact that I had never dreamed of the United States court when I made this purchase—that is, of carrying this case to the United States court—and he didn't seem to be very well satisfied with my answers, and he said he thought he would come round and, if I was amind to answer certain questions, he wouldn't be compelled to summon me before the magistrate and have my deposition taken. I not being a lawyer didn't know, of course, but what that would be legal
283 to have him do so. I told him if he did so I should claim the right of continuance till I could get my counsel; he replied I would have no such right, I not being under arrest yet. I persisted that I wouldn't give any testimony without my counsel being present; that ended the interview; and then he asked me where Mr. Walker, justice of the peace, lived, who would be the proper officer to bring me before; I told him, and he started off that way; whether he went there or not I don't know; he went that way. I told Mr. Gayley I had bought that property; I am willing to look him in the face when I make these answers. I told him I had bought that property and was going to hold it, and I intended to if the courts allowed it.

Q. Do you know this young lawyer, Filmore, who testified?

A. No, sir, I don't know him; have heard there was such a man at Spencer, but I don't know him.

Q. You heard him testify?

A. Yes, sir.

Q. Do you remember an occasion he speaks of, of his coming out to your house and having a conversation with you?

A. I know his brother came there and saw me in regard to this matter.

Objected to by defense as not responsive.

Q. Do you remember the occasion of this young man coming out there?

A. No, I don't remember his coming at all; I wouldn't swear he wasn't there, but I don't know him. Do you mean the man that came with Mr. Gayley?

Q. No; I am speaking of the occasion when this young lawyer from Spencer came out and had a conversation with you.

A. I never spoke with the man in the world.

284 Q. Do you remember Parker coming out there?

A. Yes, sir.

Q. You remember a conversation with him?

A. Yes, sir.

Q. Where was that conversation?

A. That was out near my stable.

Q. Who was present at that conversation?

A. My son.

Q. What is your son's name?

A. Charles P.

Q. Who else was present at that conversation?

A. There was two of them; I couldn't tell who the second one was that came.

Q. How did they come out there?

A. In a carriage.

Q. How long was that conversation?

A. Probably three minutes.

Q. Will you state what that conversation was?

A. Yes; they came there under a pretence of having a little collection, and I would be glad if the court would allow me to vindicate myself in a word with regard to that collection.

Q. We will come to that by and by, Mr. Giles.

A. Then he commenced and said, You have got some property in Nebraska, haven't you? I said I didn't know; there was some property there in litigation, and no man knew whether he owned anything or not till it was decided. That was my answer to him.

Q. Did you say anything to him at that time about suit being in the United States court?

285 A. No; afterwards it was drawn out. What drew it out? He said he came out empowered by these parties here to buy me off, and in his magnanimity he offered me 300 dollars for a quit-claim deed, and I thought the idea was so ridiculous I wouldn't talk with him at all.

Q. Did you say anything to him about the title having been made over to you in order to enable the suit to be brought in this court?

A. No, sir; not a word.

Q. This note that has been asked about; what was there about that note, Mr. Giles?

Defense objects as immaterial and not proper in any sense of the word. Objection sustained. Plaintiff excepts.

Q. Was there anything said at that time about that note, or about any defenses that you had to the note?

Objected to as immaterial. Overruled.

A. There was something said in regard to it; I asked him to take the plow for the interest on a 20-dollar note, a plow that had never been used, and he refused to do it.

Cross-examination by Mr. GAYLEY:

Q. State to the court where you reside?
A. I stated it once; I'll state it again; I live in Clay county, Iowa.
Q. How far from the county seat?
A. About 8 miles.
Q. How long have you lived there?
A. Well, I think it is about 12 years; I was one of the first settlers of the county.
Q. What is your business?
A. I am a farmer.
286 Q. Engaged in that business for the last 12 years?
A. Yes, sir; most of the time. I was in the mercantile business a part of the time.
Q. How much of a farm have you there?
A. I have only 80 acres.
Q. You took that as a homestead under the laws of the United States?
A. Yes, sir. I was entitled to it for honorable service in serving my country.
Q. Took it under some right you had as a soldier in the army?
A. That I had as a soldier, sir.
Q. What is the character of the improvements on that 80 acres?
A. There is a house.
Q. How large is it?
A. 16x25.
Q. What is it built of?
A. Wood.
Q. How many rooms in there?
A. Only five.

Objected to as not proper cross-examination. Sustained.

Defense excepts, and states that the question is propounded to the witness for the purpose of showing his impecuniosity and his inability to make a purchase of that kind.

Q. Who first proposed to you to purchase this real estate?
A. Mr. Burr.
Q. What relation is he to you?
A. He is a son-in-law of mine.
287 Q. At what time did he make that proposition first?
A. During the winter of 1880.
Q. Did he make it by letter?
A. He made it by correspondence.
Q. When did you first talk to Burr about this matter?
A. Some little after that.
Q. How long after that?
A. Can't tell.
Q. Where was it?
A. At my house.
Q. Was it after June 13th?
A. Yes.

Q. How long after?
A. Can't tell.
Q. Was it a month?
A. I have told you once I can't tell.
Q. Can you say whether it was a month or two months?
A. No, sir.
Q. Was it a year after?
A. No, sir.
Q. Was it 6 months?
A. It might have been and might not. I can't remember dates, not unless there is some particular thing to call it directly to my memory.
Q. It might have been 6 months, then, after June 13th, 1880?
A. It might have been. I told you we had a long correspondence about the matter.
288 Q. I want to know when your first conversation was.
A. I told you I couldn't fix the time.
Q. Was it 6 months after June 13th?
A. It might be.
Q. Was it six months?
A. I said it might be; yes.
Q. Was it before June 13th?
A. I told you it was not.
Q. Can you approximate the time—you can say whether it was a week or 6 months?
A. I have told you 3 or 4 times I couldn't fix the date. I know he was at my house and then we talked the matter over. That was after this conveyance.
Q. Wasn't it in the summer of 1881 he came to your house and talked about the matter?
A. I have no recollection about the matter of time.
Q. Has he been to your house more than once in the last 2 or 3 years?
A. I think not.
Q. Can you state when he was there?
A. Told you half a dozen times I could not.

Objected to as not proper cross-examination.

Q. Can you tell me whether it was in '81 or not?

Objected to. Overruled.

A. Well, it might have been; but, as I told you before, there was no particular thing which I fix the date from; consequently I am not able to state the time, but know the facts.
Q. Was it before or after this conveyance of Burr & Wheeler
289 was made to you?
A. It was afterwards.
Q. Have you ever been in Lincoln, Nebraska?
A. Yes.
Q. When?
A. The other day.

Q. Ever before that?
A. Never was.
Q. What do you mean by the other day?
A. I was just there before this court set, and came from there up here to it.
Q. Then I understand you to say you was never in Lincoln till last week?
A. I never was.
Q. Never saw the property in controversy here till last week?
A. No, sir.
Q. Never saw it till this conveyance was made to you?
A. No, sir.
Q. Never knew anything of the value of it from your own personal knowledge?
A. I didn't consider it of much value.
Q. If you never saw it how could you form an opinion of the value of the property?
A. From the letters of Burr to me.
Q. You had no personal knowledge of your own?
A. No, sir.
Q. You relied entirely on what Burr told you?
A. Yes.
290 Q. You placed full reliance in what he told you?
A. Yes.
Q. You acted entirely on his suggestions in this matter?
A. I did; I had confidence in him that he would write me the truth.
Q. Did you ever send any money to Burr or ever pay him any money?

Objected to as improper cross-examination. Sustained.

Q. You don't know who came out with me that time?
A. No.
Q. You don't know but it was Filmore?
A. I supposed it was some hostler from town.
Q. You wouldn't swear it wasn't Filmore?
A. No.
Q. Don't you think it was Filmore?
A. I have my doubts about it, but still I wouldn't swear it was not. I don't know that I ever saw him till I saw him in the court-room. I paid little attention to the man with you, because I supposed you had got a team at the stable, and they had sent a man down with you.
Q. What incumbrance is there upon the 80 acres that you reside upon?

Objected to as not proper cross-examination. Sustained. Defendants except.

C. P. GILES, sworn on part of the plaintiff and examined in chief by Mr. WOOLWORTH, testified as follows:

Q. Are you the son of plaintiff?

A. Yes, sir.

291 Q. Do you remember the occasion spoken of by him and witness, Parker, yesterday, of a conversation at your father's house with reference to this property?

A. Yes, sir.

Q. Who was present at that conversation?

A. There was one Parker, a lawyer from Spencer, claimed to be witness' (Parker's) brother, and I should say a man from Lincoln named Harwood, but it might have been the witness here yesterday; they were muffled up pretty well.

Q. Whereabouts was that conversation?

A. On my father's farm out between the grainery and hay-stack.

Q. Will you state what that conversation was?

A. Parker drove up and first spoke to both of us; said he was down that way and thought he would call and see about a balance on a little note. My father replied, "I thought you agreed when I was up there to take back the old plow for the interest on the note." Parker replied he thought he could do it then, but had since found out from the house that he couldn't do it. Father said he couldn't very well pay it that day, but would call round and pay it very soon. That seemed to end that part of the conversation. Parker then said, "You have some property in Lincoln, Nebraska, haven't you?" Mr. Giles said, "Well, I have bought some there, but it is under litigation, and a man can't hardly tell whether he owns any or not till after it is decided in the court." Parker then says, "I have been authorized to come here and offer you $300 for your claim, if you have any." That was what he said. Father rather turned with disdain on him at that; however, he expressed both in words and actions rather disdain

292 on the price. Then Parker says, "We propose to make it out, or prove that you are not worth 75,000 dollars and couldn't buy this property." Father replied that he didn't make any claims to be worth 75,000 dollars. Then Parker he asked if this property was not conveyed to him with the express idea of getting it into the United States court. I was there and wanted to go for some hay. I remarked that he might ask the person who was with him in the cutter, and he was from Lincoln and would tell him all about it, and that he could see from the Lincoln paper it was already in court, as I understood it. They drove off, perhaps, 20 feet, stopped, whispered together, and left.

Q. What did your father say in answer to the question whether the property had been conveyed to him to bring suit?

A. He didn't make any reply; I replied myself. I said, It is already there. I had been reading the Lincoln paper the night before and seen the decision.

Cross-examination by Mr. MARQUETTE:

Q. You say you think one of the parties was Harwood, from Lincoln?

A. As soon as I saw him in Lincoln I said, I think that is the man that was there, but I am not positive.

Q. Do you say it was Harwood instead of the witness on the stand; was the witness there, too?

A. No, sir.

Q. The witness was not there?

A. I don't say he was not there; he might have been. He resembles Mr. Harwood a little, but not as well, in my recollection, as Mr. Harwood resembles the man that was there.

293 Q. You mean to say you think the witness was not there, but Harwood?

A. That is the way I would take it, but I wouldn't say the witness wasn't there. I know the witness' brother was there, and I have seen the witness in Spencer, on the streets, once or twice.

Q. Did you hear all this conversation?

A. Yes.

Q. You heard all of it?

A. I did.

Q. And you were the party that made reply when they spoke about this matter of this suit?

A. When they spoke about the sale?

Q. Yes.

A. Yes.

Q. You were the party that made reply?

A. I was, sir.

Q. Your father, you say, said nothing?

A. He said nothing that I remember.

Plaintiff rests.

I. REAVIS, sworn on behalf of the defense and examined in chief by Mr. GAYLEY, testified as follows:

Q. State whether or not you had a conversation with L. C. Burr on the 26th of April last in regard to the property which is in dispute in this case.

No answer.

294 Q. State whether or not, on April 26th last or not, on your way to Factoryville, in this State, you had a conversation with L. C. Burr with respect to the property in dispute in this case?

A. What is this action?

Q. This is a suit brought by Giles against Owen & Oakley, including a portion of the property of which Jacob Dawson died seized.

A. I had some talk with Burr on that day and on numerous other days.

Q. State whether or not this conversation took place—state

whether or not you had any conversation with him at that time with regard to the property in question, and whether or not at that time he told you that if the fight went on with the Dawsons the truth would come out and Giles would lose his case in the Federal court, as the property had only been put in his name because he was a non-resident of the State and could sue in the Federal court.

Mr. LAMBERTSON: We object that the conversation between witness and Burr was of a professional character—was for the purpose of effecting some settlement of the rights of the various parties, as incompetent, irrelevant, and immaterial. Overruled. Plaintiff excepts.

A. I had a conversation with Burr going from Nebraska City to Factoryville——

Q. What was the date, if you recollect?

A. It was on the evening of Wednesday, I think, the 26th of April. The afternoon of Wednesday he and I had arranged to go to Factoryville, and my recollection is we traveled from Lincoln to Nebraska City together, and went by team from Nebraska City
295 to Factoryville. We talked pretty much about the difficulty about this land. The object of going to Factoryville was to see the Dawson people themselves. Burr was very anxious to settle with them, and I was representing those people. I didn't see any impropriety of a settlement if they could effect one satisfactorily. There was a good deal said in that conversation; it was a long one. We didn't talk much about anything else in fact. Precisely the exact language used I don't remember that with the precision I would like in order to give it under oath.

Mr. LAMBERTSON: I object as not proper rebuttal.

WITNESS: I remember this——

Objected that the answer should be yes or no.

WITNESS: He said on that occasion and on many other times——

Mr. LAMBERTSON: I object that the answer should be yes or no.

WITNESS: I don't remember whether he used that language or not, but that is what it meant.

Mr. LAMBERTSON: I move to strike out that part of witness' answer where he says "That is what was meant."

Motion denied.

Q. Did not Burr say to you at that same time, when you and he were going from Nebraska City to Factoryville, on Wednesday, April 26th last, in answer to the question by you why he and Wheeler didn't select some other person than Burr's father-in-law outside of the State to convey the Dawson property to, that he did it because he knew Giles—that he was all right; that he could trust him, and that he, Giles, would do just what Burr said for him to do.

296 A. I don't know that those exact words were used, but I wanted to know——

Q. Did he say that, or what is meant by the word used?

Objected to. Sustained. Defense excepts.

Q. Did he say that or that in substance?

Objected to. Sustained. Defense excepts.

Q. Did Burr say to you at the same time that he had full control of the entire business, and that it was unnecessary to wait instructions from Giles in any matter concerning the compromise with the Dawsons; that he had nothing to do with it, but must consent to anything he might do, as he and Wheeler had dug up the case, and he, Giles, was acting as a convenient party outside of the State to hold the case in the Federal court; did he say that to you?

A. He said the most of that——

Objected to by plaintiff.

Q. Is that your answer?

Objected to by plaintiff. Sustained. Defendants except.

Q. Did he say that in substance?

Objected to. Sustained. Defense excepts.

Q. What did he say in regard to the purpose he had in view in transferring the property to Giles?

Plaintiff objects. Sustained. Defense excepts.

Q. Mr Reavis, when you asked Mr. Burr in that same conversation, at that same time, why it was so necessary to hold the case in the Federal court, did he say to you that he and Wheeler would stand no show in the State court on account of political influence and money pressure in Lincoln, and that several of the D. & M. railroad officials owned part of the Dawson estate and they would
297 use the strength of the company to influence the courts, and for those reasons he had put the property in the name of Giles?

Objected to by plaintiff. Overruled.

A. He said that with the exception of the——

Plaintiff objects; that question should be put to this witness *in toto* as put to witness Burr, and not parcelled out in this way. Sustained.

Q. Did he say anything of that kind?

Objected to. Sustained. Exception taken by defense.

Q. Did not Burr say to you in the clerk's office of the Commercial Hotel at Lincoln, Nebraska, on the 21st February, 1882, when he had heard that the Dawson heirs had filed a cross-bill in the case commenced against him and Wheeler and Giles and the Dawson heirs, that unless they, the Dawson heirs, could be induced to with-

draw that paper Giles would be beat, as he really had no interest in the property, and was only a nominal party, and that the case could be prosecuted in the Federal courts, he being a non-resident of the State?

A. He said that part of it which——

Mr. LAMBERTSON: I understand the court has ruled that out.

The COURT: The witness may answer the question in a proper way, if at all, one way or the other.

WITNESS: He told me at that time and at other times that unless a settlement could be effected between him and Giles and Wheeler and the Dawsons that Giles would certainly lose the case.

298 Plaintiff moves last answer as above be stricken out, and the court so ruled. Defendants except.

Q. Did Burr tell you at the same time that Giles was only a nominal party; that the case could be prosecuted in the Federal courts, he being a non-resident of the State?

A. His exact language I don't remember, but he left that impression on my mind; I am taking advantage of the permission of the court to answer in my own way.

Plaintiff moves that be stricken out as not responsive. Overruled.

Q. Didn't you ask Burr on the way from Nebraska City to Factoryville why he and Wheeler took the property in their names, and if their object was to litigate concerning the title in the Federal court, and didn't Burr reply that he ought to have done that in the first place, but that he hadn't thought of it, and besides he didn't understand the ropes as well then as he did now?

A. I asked him that question and he made answer about the way it is stated. There may be some difference in the phraseology from the exact words he used, but he said he didn't understand the thing as well then as he did now.

Plaintiff moves to strike out answer as not responsive. Overruled and exception taken.

Q. Did you ask Burr at that time this question, How will a settlement with the Dawson heirs keep the case in the Feneral courts? And didn't Burr reply that a fix up with the heirs would keep them friendly, and no one else knew how Giles held the property; that they knew that he and Giles were the same as one, and

299 that whatever he told Giles to do he would do it and ask no questions; that Giles was acting as Burr said and not as he, Giles, said, and that he, Burr, knew the Dawsons well, and if they were friendly the opposition could get nothing out of them?

A. I couldn't see how a settlement with the heirs would affect this matter——

Objected to by plaintiff. Sustained. Defendants except.

Q. What is the fact about it—in answer to the question which I have propounded?

A. I asked him the question substantially as it is given to me.

Plaintiff moves to strike out the answer. Sustained. Defendants except.

Last question but one then read over to witness.

A. I wanted to know what effect a settlement would have, and I asked him that question.
Q. Then what did he say?
A. I can't say that his answer was in the exact language used there.
Q. Was it about that?
A. Yes.

Objected to by plaintiff. Sustained. Exception taken.

Q. Was his answer to that question anything of the kind that is stated here in this question?

Objected to. Sustained. Defendants except.

Q. Was it that in substance?

Objected to as not the question put Burr. Sustained. Defense excepts.

No cross-examination.

300 H. H. WHEELER, recalled on behalf of plaintiff and examined in chief by Mr. WOOLWORTH, testified as follows:

Q. You heard — testimony of last witness?
A. Yes, sir.
Q. Do you remember the occasion spoken of by him of a conversation between yourself, Reavis, and Burr in the clerk's office of the Commercial House?
A. I remember there was a conversation.
Q. Now, state whether or not, at that time, there was anything whatever said about Mr. Giles being a mere nominal party or that the case could be prosecuted in the Federal courts, he being a non-resident, or anything of that kind.

Defendants object.

No answer.

Testimony here closed, no further or additional evidence being adduced by either party.

301 Copies of exhibits to this testimony hereupon follow, 101 & 102 (two exhibits) and 103 & 104 (one exhibit.) The several exhibits are numbered on the margin 1, 2, 3, & 4.

(Folios 98 & 99 were duplicates of 100 & 101, and 98 & 99 are therefore withdrawn. O. A. M., Spe. Ex.)

1. This instrument, made and entered into this tenth day of November, 1875, between Lionel C. Burr and Hiland H. Wheeler, both

of Lancaster county, Nebraska, party of the first part, and William R. Dawson, Albert R. Dawson, Minnie Dawson, Melita Dawson, and Evaline Dawson Knicely, heirs-at-law of Jacob Dawson, deceased, parties of the second part, witnesseth: That the said parties of the first part do hereby agree with the said parties of the second part that whenever the said parties of the first part shall come into possession and be seized in fee-simple absolute of the estate, or any part thereof, conveyed by said parties of the second part to said parties of the first part, then said parties of the first part shall quit-claim to said parties of the second part the one-third undivided interest which they, as tenants in fee-simple, have in said premises, or, at the election of said parties of the first part, pay to the said parties of the second part the value of said undivided third interest of said estate in cash.

In witness whereof the said parties have hereunto set their hands and seal the day and year above first written, and if any money comes into the hands of us by way of settlement of suits herein one-third thereof we will pay to parties of the second part after deducting expenses.

(Signed) L. C. BURR.
HILAND H. WHEELER.

Witness *and* signatures—
(Signed) H. P. KEMP.

302 For value received, to wit, the sum of five dollars, in hand paid by the heirs of Jacob Dawson, the receipt whereof is hereby acknowledged, we do hereby, jointly and severally, guarantee the performance and fulfillment by said L. C. Burr and H. H. Wheeler of the within agreement with said heirs and all the conditions thereof mentioned therein.

(Signed) C. BURR.
J. R. WEBSTER.
A. D. BURR.
FRANK L. SHELDON.
WM. M. CLARKE.

Dated Lincoln, Neb'r, Jan'y 14, 1882.

(2.) This instrument, made and entered into this 27th day of April, 1880, between Ezekiel Giles, of Clay county, Iowa, party of the first part, and Hiland H. Wheeler and Lionel C. Burr, of Lincoln, Lancaster county, Nebraska, parties of the second part, witnesseth: That the said parties of the second part, by the deed of even date herewith, have conveyed to the said party of the first part certain lands and premises in Lancaster and Otoe county, Nebraska, which were conveyed to the said second parties by the heirs of one Jacob Dawson, deceased, reference to which said deed is herein had for a more particular description of said land and premises, which said lands and premises have not yet been reduced to possession by said second party, but are claimed by various persons. Now, it is mutually covenanted that the said parties of the second part shall, and they hereby agree, to prosecute all suits against said claimants

at the expense of said first party for the possession of said premises and to render or procure all necessary legal assistance for such purpose. And the party of the first part, in consideration
303 thereof and of the conveyance to him aforesaid, hereby agrees to pay all the expenses of such suits as may be necessary as aforesaid, and, in the event of final success of any such suits, to pay the said Hiland H. Wheeler and Lionel C. Burr the value of one-third of said lands and premises the possession of which is so recovered. And the said party of the first part does also agree to assume and discharge and pay off all indebtedness arising or to arise by reason of a certain contract dated November 10, 1879, between said parties of the second part and the afore-referred heirs of said Jacob Dawson, and to save harmless said parties of the second part therefrom. Reference to said contract for a more particular description of the covenants therein contained is herein had.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

EZEKIEL GILES. [SEAL.]
L. C. BURR. [SEAL.]
HILAND H. WHEELER. [SEAL.]

Signed, sealed, and delivered in presence of—
CHARLES P. GILES.

(3rd.) Know all men by these presents that we, Ezekiel Giles and Lydia Giles, wife of said Ezekiel Giles, both of Spencer, county of Clay, in the State of Iowa, have made, authorized, and appointed, and by these presents do make, authorize, and appoint Lionel, C. Burr, of Lincoln, Lancaster county, Nebraska, our attorneys, for us and each of us, in our names, to enter into and take possession of all such lands, tenements, and real estate whatsoever in the coun-[ties] of Lancaster and Otoe, Nebraska, whereof either of us now are or hereafter may be by any way or means entitled to or interested in.

Also for us in our names to commence and prosecute any
304 action at law or in equity to recover possession of said real estate, and to compromise any and all claims held by any and all persons against said real estate, as in his judgment he shall deem meet. Also for us and in our names to grant, bargain, sell, lease, mortgage, or otherwise dispose of said premises, and for us and in our names to make, deliver, or receive good and sufficient deeds, leases, conveyances, and all other instruments necessary to express or carry out the power herein granted to said Lionel C. Burr. And we do hereby empower said Lionel C. Burr, as our attorney and in our names, to manage and control said real estate as fully as we or either of us could if personally present, hereby ratifying and confirming whatever our said attorney may do or cause to be done in and about said real estate by authority of these presents.

(Pages 99 & 100 withdrawn for reason stated on page 97. O. A. M.)

In witness whereof we have hereunto set our hands and seal this 3rd day of July, 1880.

EZEKIEL GILES. [SEAL.]
LYDIA GILES. [SEAL.]

Signed, sealed, and delivered in presence of—
M. E. GRIFFIN.

STATE OF IOWA, } ss:
Clay County, }

On this 3rd day of July, 1880, before the subscriber, a notary public, personally appeared Ezekiel Giles and Lydia, his wife, to me known to be the identical persons described in and who executed the foregoing instrument as grantor, and acknowledged said instrument to be their voluntary act and deed.

In witness whereof I have hereunto set *our* hand and seal, at Spencer, in said county, the day and year last above written.

(Signed) M. E. GRIFFIN,
Notary Public.

305 L. C. BURR, ATTORNEY,
OFFICE ROOMS, 4 & 5 STATE BLOCK,
LINCOLN, NEBRASKA, *July 23d*, 1880.

Wm. R. Dawson, Esq., Factoryville, Neb.

DEAR FRIEND: Your letter of late date was received, and I want to reply to some things relating to the suit of the Dawson Heirs *vs.* Bacon *et al.* I have but very little doubt in my mind but what I shall, within four years from to-day, win this suit and get you heirs all this property back again, and thereby not only make myself but all of you heirs independently rich. Of course it is a long and tiresome and expensive suit, but I expect and know that now while commencing the same, yet you heirs are all interested with me and must help me all you can, as the men that I must fight are rich and numerous, and will do all they can to delay and hurt my prospects to win the case. Galey is already helping them all he can by saying he saw the will one year after it was put in court; that your father at the time of his death was heavily in debt to the full extent of his property, viz., $10,000, etc., and that H. S. Jennings drew the will. Now some of these matters may have to be proved by oral testimony, and your mother, yourself, and any person who can remember of — may have to be my witnesses, and don't you see if "they" try to explain this will by evidence outside of the will itself, then your mother will certainly be the best witness of all. And when they admit that something must be explained in this way, they admit that the intention of your father was to give this property to your mother to use until she married again, and then his boys and girls should have it. This will has been on record during all this time, and is staring them all in the face, telling them that when Editha J. Dawson marries you "they" cannot have this
306 property; then the Dawson heirs shall have it. Now, can't you and your mother write me, and tell me, first, did not

your father write this will in his handwriting? He was a practicing attorney at that time. He may have consulted with Judge Jennings; but certainly he thought and considered himself as good, if not — better attorney, than Judge Jennings. He may have had him and John H. Helman sign his will as a witness, but that does not say who drew the will. In whose handwriting was the will? Your mother must remember. 2nd. Some person knows where and has the will, I think. I have looked all the papers over that were left with me. Did you ever see it? Where was it last? Did you have it up home? Now, Will, I expect you are not feeling well, but here is a fortune for us both, all of us, and I tell you I will get the property safe if nothing happens to us, and all of you must help me. Find that will if it is in your old papers, if it takes a month to do so; don't give it up. It seems to me that I must have it and prevent Galey from going into the witness stand and swearing you children out of all this property. Has he not injured you enough before to-day *enough*? There is more in this suit, Will, than your folks have thought. Do you think I would go into this if I did not almost know we will win? I have brought the case in — U. S. circuit court, so I can go to the Supreme Court of the United States, where they have decided a will case just like this one. Help me in this; do your part and I will make you all more money than you can make in a lifetime on the farm, and at the same time make myself well off. Read this letter to your mother. Get all the facts. Who drew the will? Was mother present? Did she know the contents before it was signed? Where was it last? Can she find it now? And we will give Galey such a dose that will forever quiet him.

307 Don't answer any letter that may be written to you relating to this will, and, if you think proper, send them, or copies, to me. It may be they will send some person over there to see you. Be careful what you say to them, as they will afterwards swear against you, and, above all, don't sign any paper with them; but this I need not write, as I know you will not. Don't think that I am sure of winning this case. I am not yet. I firmly believe that I will if all of you help me all you can. Write soon; tell me all the particulars; send the deed to Reynolds as soon as convenient, and oblige,

Yours truly, L. C. BURR.

May on Building in Block 54.

DAVID MAY sworn and examined by BURR:

Q. 1. Are you acquainted with S. W. Little?
A. Somewhat; yes.
Q. 2. How long have you known him?
A. Ever since he has been in town; eight or ten years.
Q. 3. What is your business?
A. Clothing merchant.
Q. 4. Since the 14th day of November, 1879, where have you done business?

A. In Mr. Little's building, opposite the post office, Lincoln.

Q. 5. Is it next to and adjoining Mr. Turner's building on the west, where Mr. Turner keeps a drug store?

A. Yes.

Q. 6. Can you describe the premises; tell where it is, what lot and block?

A. No; I could not exactly; there could not be any mistake.

Q. 7. Is it lots five and 6, in block fifty-four, in the city of Lincoln?

A. I think it is.

Q. 8. Is it the only store building that Mr. Little owns?

A. I think that is the only one he owns in that block.

308 Q. 9. It is in the city of Lincoln, Lancaster county, Nebraska?

A. Yes, sir.

Q. 10. How long have you occupied that store?

A. I think since '78 or '9—the summer of '78 or '9; I could not, without looking, tell.

Q. 11. You are sure you have occupied since the 1st of November, '79, down to the present day?

A. Yes, sir.

Q. 12 Who else has occupied the premises with you as a tenant?

A. No one else but me.

Q. 13. Do you hold that under a written lease at the present time from Mr. Little?

A. I have no lease now.

Q. 14. How much money have you paid to Mr. Little per month for the use and occupation of this building since the 14th day of November, 1879, down to the present time?

Ames objected as immaterial and irrelevant.

A. I have paid him $125.00 each month.

Q. 15. Do you occupy all of the premises now as his tenant?

A. Yes, sir.

Q. 16. I will ask you if you know that this property is described as 19 feet and 5 and one-half inches off of lots 5 and 6, in block 54, in the city of Lincoln, Nebraska?

A. I could not tell you.

Q. 17. What is a reasonable, fair price for the rent of these premises?

Ames objected as immaterial and irrelevant.

A. I think $125.

Q. 18. What is a reasonable, fair price for the rent of these premises during the time you have spoken of?

Ames objected [as] immaterial and irrelevant.

A. I think $125 a month.

AMES: I object to the answer as immaterial and irrelevant and incompetent, and to the question as leading.

309 Cross-examined by AMES:

Q. 18. Do you know the rental value of property in Lincoln?

A. Why, I am not a very good judge of values.

Q. 19. Do you know what the fair rental value of store buildings in Lincoln is?

A. Why, yes; I have been accustomed to renting stores.

Q. 20. Take this property you have been occupying and you have been testifying about, what would be the fair rental value of the building without reference to the ground—the building alone?

A. It depends on the locality and all that.

Q. 21. Suppose it was located in the same place, but the building rented separately from the lot, do you know what it would be worth?

Burr objected [as] not cross-examination, incompetent, immaterial, and irrelevant

A. It would not make any difference to me; if I got a building on that lot I would just as soon pay the same price for the building.

Q. 22. Do you know what the fair rental price of the ground without the building would be?

A. That I could not say.

Q. 23. You have occupied this building since the summer of '78 or '79?

A. I think so; yes.

Q. 24. Have you during that time rented any other business room in Lincoln?

A. Yes, sir.

Q. 25. How many, and whereabouts?

A. I have got one, Schumacher's store.

Q. 26. Does that adjoin you?

A. It is three doors from that.

Q. 27. Any other locality have you rented any?

A. No, sir.

Q. 28. What is your business?

A. Clothing merchant.

Q. 29. Any other business?

A. Dry goods merchant.

Q. 30. Any other?

A. Merchant tailoring.

310 Q. 31. You have not had any other business during this time, have you?

A. Not that I know, sir.

Q. 32. Mercantile business of some kind has been your whole business the whole time?

A. Yes, general trade.

Witness excused.

Turner on Building in Block 54.

W. J. TURNER sworn and examined by BURR:

Q. 1. How long have you resided in Lincoln?

A. Over 13 years.

Q. 2. What has been your business?

A. 12 years drugs and stationery.

Q. 3. Have you occupied a drug store and stationery store at any point since the 14th November, 1879, here in Lincoln?

A. Yes, sir.

Q. 4. Whereabouts have you occupied it?

A. On the south side of the square opposite the post office.

Q. 5. How do you occupy the premises and to whom do you pay the rent?

A. I have occupied under a lease.

Q. 6. From whom since November 14, 1879?

A. I cannot tell whether Bacon owned the building at that time or not.

Q. 7. Since the 29th day of October, 1880, to whom have you paid the rents of the premises you say you have occupied?

Ames objected [as] immaterial and irrelevant.

A. I am not positive as to dates; I can tell by looking through my ledger, but I cannot tell from memory.

Q. 8. Will you please examine your ledger and then tell the examiner when it was that you first commenced to pay rents to Owen and Oakley?

A. Yes, sir.

(At this point witness left the stand and the room; on his return—)

Q. 9. Have you now examined your ledger as to refresh your memory as to dates?

A. Yes, sir.

Q. 10. From November 1st, 1880, down to the present time to whom have you paid rents.

311 Ames objected [as] immaterial and irrelevant.

A. Owen and Oakley?

Q. 11. What premises have you been occupying and paying rents for to Owen and Oakley?

A. I do not know that I could give an exact description; it is in block 54, I think, part of lots 5 and 6.

Q. 12. I would ask you if it is 19 feet and 5 and a half inches off lots 5 and 6 in block 54, in the city of Lincoln, Nebraska, more fully described as 18 feet nine and a half inches off the west side of lot 5 and 18 inches off the east side of lot 6 in block 54, in the city of Lincoln, are the premises you have been occupying?

A. I could not say positively; it is my impression that is the description.

Q. 13. From November 1st, '80, how much of the premises have you occupied?

A. The first floor and the basement.

Q. 14. How much money per month have you paid to Owen and Oakley during all of that time?

Ames objected [as] immaterial and irrelevant.

A. $87.50 per month.
Q. 15. Who occupies the upper floor?
A. I think Dr. Grimes has the whole of it.
Q. 16. Prior to November 1st, 1880, to whom did you pay rent?

Ames objected [as] immaterial and irrelevant.

A. J. D. Bacon.
Q. 17. Josiah D. Bacon?
A. I could not tell the first name.
Q. 18. Is that the same Bacon who sold the premises to Owen and Oakley?
A. Yes, sir.
Q. 19. From November 14, 1879, to the 1st day of November, 1880, how much money per month did you pay to Josiah D. Bacon?

Ames objected [as] immaterial and irrelevant.

A. At the same rate as since.
Q. 20. $87.50 per month, as I understand you?
A. Yes, sir.

Witness excused.

312 *Lansing as to Block* 54.

J. F. LANSING sworn and examined by BURR:

Q. 1. State how long you have resided in Lincoln, Nebraska.
A. 11 years.
Q. 2. What has been your business during that time?
A. Selling real estate, fire insurance, and loaning money.
Q. 3. Where has been your office for the last several years?
A. Block 54, O street.
Q. 4. Part of lots 4 and 5 in block 54, is it?
A. Yes; I think it is 4 and 5; they kind of lap a piece there; it may come out of 6; I do not know; it is 4 and 5 anyway.
Q. 5. To whom have you paid the rents during this time?

Ames objected [as] immaterial and irrelevant.

A. From November, '79, to March, '82, I have paid rents to Mr. Alexander; from that time to the present time I have not paid any rent; I think November, '79, is about the time he got the building; I presume that is it; I cannot swear to a positive date. I paid rent to him from the time he got the building; before that to Cody; I cannot mention the dates.
Q. 6. As I understand it you paid your rents to D. B. Alexander?
A. Yes, sir; I have D. B. Alexander's receipts.
Q. 7. Did you ever pay any rents to Martha Alexander?
A. I never paid any rents to her.
Q. 8. David B. or D. B. is the husband of Martha Alexander?

Ames objected as immaterial.

A. Yes, sir.

Q. 9. You paid your rents to him?
A. Yes, sir.
Q. 10. And not to his wife?
A. No, sir.
Q. 11. How much per month from the 14th November, '79, to March, '80, did you pay him?

Ames objected [as] immaterial and irrelevant.

A. $12.50 per month.
Q. 12. How much of the premises did you occupy?
313 A. Two rooms in the second story.
Q. 13. The two front rooms?
A. No; one front and one back; dark with a skylight; two rooms in that story.
Q. 14. Who made the repairs in those rooms and premises that you leased at that price?
A. The repairs were made by myself.
Q. 15. What repairs did you have to do?

Ames objected [as] immaterial and irrelevant.

A. Calcimined, painted, and grained, and put in a new floor, new glass, two glasses in the doors, and papered the walls.
Q. 16. Did you also pay taxes on the premises?
A. No; I did not pay taxes.
Q. 17. Did you cease paying rents the 1st day of March?
A. I think it is March or April; I will not be sure; I always pay in advance, and whether I paid for March I do not know; it is from the first of March or the 1st of April I quit.
Q. 18. You quit paying anybody?
A. Yes; I have not paid any since.
Q. 19. You are a defendant in this suit?
A. It is said so; I do not know anything about it.
Q. 20. You are acquainted with David May?
A. I am acquainted with David May; yes.
Q. 21. Whose premises has he occupied for several years past.
A. S. W. Little's.
Q. 22. How far is that from the premises of Owen and Oakley?
A. In the neighborhood; it will be adjoining on the west.
Q. 23. What premises does S. W. Little adjoin on the west—Owen and Oakley's?
A. Yes.
Q. 24. And you are in the premises next adjoining Owen and Oakley's?
A. On the east.

314 Cross-examined by AMES:

Q. 25. Why did you stop paying rent on the 1st of March or the 1st of April?
A. I refused to pay rent because they would not give me the proper security that I might not have to pay again. I wished to have a certain paper signed by them; so I did not pay.

Q. 26. Were you notified by anybody not to pay rents to Alexander?

A. No, sir.

Q. 27. What induced you to demand security?

A. Why, Messrs. Owen and Oakley gave a certain receipt indemnifying tenants against cost of loss. I asked Alexander, or his attorney, for the same kind of receipt and he would not give it to me; so I would not pay the rent; that is about the only thing.

Witness excused.

Grimes as to Block 54.

RICHARD S. GRIMES, M. D., sworn and examined by BURR:

Q. 1. Where have you been having your office since November, 1879?

A. In the building now owned by Owen and Oakley.

Q. 2. What rooms have you been occupying?

A. I have been occupying three rooms over the store—four, I believe, at present.

Q. 3. Since the 14th of November down to the present time how much money have you paid for rents per month—November 14th or 15th?

Ames objected [as] immaterial, irrelevant, and leading.

A. 16th; $22 per month——

AMES: Did you say part of the time $16?

[A.] I was trying to get at the dates; my first rent was to Bacon; I cannot say when I first paid rents to Owen and Oakley without looking at the lease. I think it was in 1880 previous to that time I paid him.

BURR: J. D. Bacon?

Ames objected [as] immaterial.

A. (Cont'd). Yes.

315 Q. 4. How much did you pay per month?

Ames objected [as] immaterial and irrelevant.

A. $16.75.

Q. 5. Who occupies the balance of the rooms upstairs?

A. I have control of all the rooms.

Q. 6. At what?

Ames objected [as] immaterial and irrelevant.

A. $22 per month.

Q. 7. Since November 1st, '79, down to the present time for this whole floor upstairs you have paid $22?

A. No; since November 1st, 1880, I have paid $22.

Q. 8. From November 1st, '79, to November, 1880, you paid $16.75 per month?

A. $16.75 per month.

Witness excused.

Lane as to Block 54.

MILTON LANE, M. D., sworn and examined by BURR.

Q. 1. From November 14, '79, to present time where have you had your office?

A. In the building known as the Sherwin building, over Bedford's shoe store.

Q. 2. Is it the same building known as the A. P. S. Stewart building?

A. No; I suppose it is the Professor's store.

Q. 3. Part of lots 8 and 4 in block 54?

A. I do not know the exact numbers.

Q. 4. How many rooms upstairs have you occupied?

A. Part of the time we have occupied 4 and part 2; when my family has been gone only 2, and when they were gone I was only charged with the rent of 2 rooms.

Q. 5. From November 14th, '79, down to the present time how much money per month have you paid as rents of these premises?

Ames objected [as] immaterial and irrelevant.

A. Well, when my family was here and kept house I paid $20 per month; when they were gone I paid $15 per month.

Q. 6. About how long has your family been absent so that you paid only $15.

316 A. I would have to count that up. In '80 they were gone three months, and last year and this year they have been gone about ten months; that is about 13 months they have been gone since I lived there.

Q. 7. From November 14th, '79, to the 14th day of October, 1881, to whom did you pay the rents?

A. Mr. Sherwin till the Professor bought it, and then I paid rents to him until I was notified that I was sued; of course I did not know what I was sued for, but I told him I thought it was rent, not the other case, and if it was the rent I felt it but just I should have a bond; he did not feel disposed to give the bond, and I have not paid any rent, I think, from February. I should have to refer back.

Q. 8. Since advised of the commencement of this case?

A. Yes, sir; I did pay my rent before that at $15 a month.

AMES: We object to all this as immaterial.

Q. 9. Has anybody else occupied the premises?

A. My brother has occupied one room all the time.

Q. 10. Do you know what he has paid per month?

Ames objected [as] immaterial and irrelevant.

A. I think it is $3 a month.

Q. 11. During all this time?

A. Yes; I think so; well, he ceased to pay rent when I did, the same dates.

Witness excused.

Trickey as to Block 54.

EDWARD L. TRICKEY sworn and examined by BURR:

Q. 1. From the 14th day of November to the present time what has been your business and where has been your place of business?

A. I have conducted a jewelry business opposite the post office on O street, in the building known as the Cody building, I suppose; I never knew any name for it.

317 Q. 2. The Alexander building?

A. The Alexander building.

Q. 3. It is next to Owen and Oakley's building—that is, on the west of it?

A. It is next to Turner's drug store, east; west of Wait's shoe store, between the two.

Q. 4. To whom have you paid rents during that time?

Ames objected [as] immaterial and irrelevant.

A. To D. B. Alexander, the only rents I ever paid in person. You state up to the present time I have been absent six months, and I do not know what has occurred during that time. I do not know anything about it. I have not investigated the matter at all since I came back.

Q. 5. How much money have you paid per month to Mr. D. B. Alexander during that time?

Ames objected [as] immaterial and irrelevant.

A. $75 per month.

Q. 6. How much of these premises do you occupy?

A. One room on the ground floor, only.

Q. 7. Who occupies the cellar?

A. D. B. Alexander retains it; he reserved it in the lease.

Q. 8. Do you know what that cellar is worth per month?

Ames objected [as] incompetent.

A. I presume it is worth nothing, since he was not able to rent it; that is he did not rent it, and we have some old boxes in there and pay nothing for it. I do not have any goods put in it.

Q. 9. There is no demand for it?

A. No, nobody wanted it; he tried to rent it, but it has laid idle.

Q. 10. On paying this $75 per month who done the repairs of the premises?

A. J. B. Trickey & Co.

Q. 11. What did you have to do; what did you do?

Ames objected [as] immaterial and irrelevant.

A. Papering and painting; that is about all; other repairs
318 that should have been done are not attended to by anybody.

Q. 12. New floor?

A. No new floor and no new ceilings. We expended some money there in papering and painting.

Witness excused.

Burr as to Deed and Dawson's Heirs.

L. C. BURR retook the stand and testified as follows:

1. I am acquainted with Albert Dawson and Mahala J. Dawson, his wife; they are both living to-day. I was acquainted with Evaline Dawson Knicely in her lifetime. She is now dead. She was living on the 25th of February, 1880, at the time she executed the deed now in my hand, marked Exhibit "F." I was acquainted with William R. Dawson in his lifetime; he is now dead. His wife, Sarah H., is now living; and Minnie S. Dawson, Melita C. Dawson, I was acquainted with at the time they executed this deed now in my hands and marked Exhibit "E." All of the others are dead, and I know these children to be the heirs of Jacob Dawson.

AMES: I object to that testimony as incompetent and irrelevant.

Witness continuing: And there are no other heirs. I know that these deeds were signed by all the surviving heirs of Jacob Dawson. Jacob Dawson had no other heirs than those that signed these deeds to Burr and Wheeler; but John Hampton Dawson, who died, a child of Jacob Dawson, died without issue.

AMES: I object to all this evidence as incompetent and immaterial and I should prefer that some one should ask questions, so as to preserve the record as we go along.

Cross-examined by AMES:

Q. 2. When did Evaline Dawson die?

A. She died in the winter or spring of 1881.

319 Q. 3. When did Wm. R. Dawson die?

A. Wm. R. Dawson died before his sister, Evaline Dawson, died. He died probably in the fall; he died, I think, in the fall of 1880.

Q. 4. Who is the eldest in that family of children?

A. Well, Willian Dawson was the eldest that I know—that I was acquainted with.

Q. 5. How old was he at the time of his death?

A. He must have been about 27 or 28 years old, 26 or 27 years perhaps.

Q. 6. Evaline was the youngest, was she not?

A. No, sir; Evaline was next to William R.

Q. 7. Which was the youngest?

A. The youngest? Minnie S.

Q. 8. How old is she?

A. Minnie S. is now in her 17th year.

Q. 9. How old is Albert?

A. Albert Dawson is about 25.

Q. 10. There are two other girls?

A. One other girl living; there are only three of the Dawson heirs living, Albert Dawson, Melita Dawson, and Minnie Dawson; the balance are dead.

Q. 11. How old are Melita and Minnie?

A. Melita is just past age now.
Q. 12. A little over 18?
A. A little over 18, and her next sister, Minnie, is about 17; she is in her 17th year.
Q. 13. Did any of these children that died leave children?
A. No, none, sir; William R. Dawson has left a child; I do not know whether it is a boy or girl.
Q. 14. Now living?
A. Yes, sir.

Witness excused.

Redford as to Block 54.

T. W. REDFORD sworn and examined by BURR:

Q. 1. Were you acquainted with F. T. Sherwin and T. H. Wait?
A. Yes, sir.
Q. 2. Are you acquainted with A. P. S. Stuart?
A. Yes, slightly.
320 Q. 3. Are you acquainted with the store-room and cellar located in the second-story brick building situated in block 54, on part of lots 3 and 4, south side of the post-office square?
A. I am not sure about the number of lots and block.
Q. 4. You are acquainted with this lease (exhibit shown witness) on the premises from Sherwin to Wait?
A. Yes, sir.
Q. 5. That lease you secured when you purchased of Mr. Wait?
A. Yes, sir.
Q. 6. And you assumed that lease?
A. Yes, sir; the unexpired part of it.
Q. 7. It is not expired yet?
A. No, sir.
Q. 8. From November 14th, 1879, up [to] the 14th day of October, 1881, you assumed it and paid rents; when did you buy out Wait?
A. I commenced July 1st, 1881.
Q. 9. From July 1st, 1881, to October 14th, 1881, to whom did you pay rents?

Ames objected [as] immaterial and irrelevant.

A. I paid it to Sherwin. I am not positive about dates, but I think it was about that time when Stuart took possession; from the first of July, 1881, to the time that Stuart took possession I paid the rent to Sherwin.
Q. 11. How much money per month did you pay?
A. $95.
Q. 12. That is for the store-room and cellar only?

Ames objected [as] immaterial and irrelevant.

A. Yes.
Q. 13. From the 14th of October down to the present time to whom have you paid rent?

Ames objected [as] immaterial and irrelevant.

A. I have not paid any rents the last seven or eight months. I paid Stuart rents, possibly, for October, or for November, December, and January; I think three months; I could not be positive. I think there was three months when I paid rent.

Q. 14. Since then you have not paid rents anywhere?

321 A. Nowhere; I think I have not paid rents from the first day of February to the present time; that is the best of my recollection.

Witness excused.

Files and Records.

Burr put in evidence the petition and the answer in the case now on trial and all the pleadings and files and records; reference is here made by the examiner to these files, records, and papers, and they are hereby made a part of this report.

There being no other witness present, the further taking of testimony in this cause was adjourned to Saturday, October 14th, 1882, at the same place.

On Saturday, October 14th, 1882, at the same place, the same counsel being present representing the parties respectively, the taking of testimony in the cause was resumed.

Kennard as to Values of Property.

T. P. KENNARD sworn and examined by BURR:

Q. 1. How long have you resided in Lincoln?

A. About 14 years.

Q. 2. You were one of the commissioners of Nebraska to locate the capitol, were you not?

A. I was.

Q. 3. In the months of May and June, 1869, was you acquainted with the value of real estate in the city of Lincoln?

A. I think I was.

Q. 4. At that time was you acquainted with the east half of the southwest quarter of section 25, township 10 north, of range 6 east, in Lancaster county, Nebraska, now familarly called Capital addition to the city of Lincoln?

A. I think I was.

Q. 5. What was the value of that 80 [acre] tract of land at that time?

Ames objected [as] immaterial and irrelevant.

322 A. Well, I think the way it was rated at that time—I think it was worth, well, it was worth some twelve to fifteen thousand dollars, that 80.

Cross-examined by AMES:

Q. 6. The land was vacant at that time—no buildings on it?

A. No, I think there was no building on it.

Q. 7. Do you estimate its value as the fair market value for cash?

A. I suppose it ought to be worth about $150 per acre; that was at the time I bought a little strip of land right east of my house; I paid a good deal more for it; but taking the 80 acres of land at this time, judging from the fact, I would think a fair valuation would be twelve to fifteen thousand dollars.

Q. 8. That is the cash value?

A. Yes, I should think so.

Q. 9. A portion of the land lay over the slope away from the town, did it not, and does now?

A. If I understand the way it lies, it does not.

Q. 10. The Hoagland place is on it and runs away?

A. O, there may be a little descent at the corner, where Henry Hoagland lives; it slopes a very little. Henry Hoagland has a different view of the town; it slopes to east and some to—it may drop a little to the east, but more to the north—the ground may drop a little more. I do not know exactly without going over it; but my recollection is it would drop more to the north than east.

Q. 11. You do not know of any being sold at that time?

A. No, I only judge upon that, basing my judgment upon the general transactions in real estate at that time, with which I was familiar.

Q. 12. You are not in the real estate business?

323 A. In '69 only for the State and a little for myself.

Q. 13. You state that land was rated at that time at the value such as you have stated; do you regard these as fair rates or otherwise—were not these prices speculative at that time?

A. Well, I do not know hardly as they were; my property, I think, I bought where my house was; where my house is I bought in '69; I paid something over $100 a lot; that is nearly right at the corner of this 80 acres; I paid at the rate of nearly $400 an acre.

Q. 14. I simply want to know whether you regard the price as fair or speculative?

A. I regard it as the fair cash price at that time. Since that this outside property in '73 or '4 declined in value from the fact that there were no purchasers, and sales had to be made; but that was a decline from what previously I consider a fair cash value.

Redirect examination by BURR:

Q. 15. You say you was in the real estate business for the State of Nebraska at that time?

A. Yes, sir; as commissioner—as one of the commissioners that had in charge the sale of Lincoln lots and some lands belonging to the State.

Q. 16. School lands?

A. No; saline lands.

Q. 17. That was a large amount of real property, both lots and lands?

A. Yes, we sold a large amount.

Q. 18. As I understand, the commissioners, of whom you were one,

sold the State lots here in Lincoln and the State lands adjoining Lincoln and vicinity?

A. Well, in the vicinity of Lincoln. I did not know there was any adjoining.

Q. 19. In dealing with that real estate you acquired a knowledge at that time of real estate?

A. I think so.

Witness excused.

324 The complainants in the cross-bill and respondents in the bill here ended their testimony for the time.

The respondents in the cross-bill and complainants in the bill adduced testimony.

Little as to Block 54.

S. W. LITTLE sworn and examined by AMES:

Q. 1. You are one of the parties in this cause?

A. Yes, sir.

Q. 2. How long have you resided in this town?

A. Since October, 1871.

Q. 3. What has been your business during that time?

A. Corn-milling business and real estate.

Q. 4. Dealing extensively in real estate?

A. Somewhat.

Q. 5. On your own account?

A. On my own account.

Q. 6. Do you know the value of real property in Lincoln?

A. I have some idea of values.

Q. 7. Do you know the value of lots 4, 5, and 6, and the west half of lot three in block 54, Lincoln?

A. Yes.

Q. 8. What is the value of these lots without the improvement?

Burr objected [as] incompetent, irrelevant and immaterial.

A. I suppose them three lots would be worth some place in the neighborhood of $12,000 to $15,000.

Q. 9. The three lots and the half lot?

A. Yes, from the way other property sold on the square.

Q. 10. What would each lot be worth?

A. I should say from $4,000 to $5,000; I would put it—well at about that—at about $15,000, from $14,000 to $15,000—say each lot $4,000.

Q. 11. What is the description belonging to you involved in this suit?

A. There is 24 feet and 8 inches off lot 6 in block 54.

Q. 12. What are the improvements on that property worth?

Burr objected [as] incompetent. Question withdrawn.

Q. 13. Do you know what the improvements on that property are worth?

325 A. I can tell what I have always valued them at in making up estimates of values of my whole property. I have always valued it at $10,000 in making up annual estimates. I counted between $5,000 and $6,000 on the improvements and the balance on the lots.

Q. 14. Do you know the value of the improvements on the property in controversy—on the lot belonging to Owen and Oakley in that block?

A. That property is lot 5 and part of lot 6, in block 54; I would suppose the improvements on it——

Burr objected [as] incompetent, immaterial, and irrelevant.

Q. 15. Do you know what the improvements are worth?

A. I have got an idea what they are worth; I could not say positive what the real value is; but I do not think such improvements could be put up now for less than $4,000 or $5,000. Their building is about 80 feet in depth—70 to 80—and then there is a building behind on the property, which is a warehouse, which is $100.

Q. 16. Do you know the value of the improvements on the lot next adjoining, on the east, the property of Mrs. Alexander?

Burr objected [as] incompetent, irrelevant, and immaterial.

A. I think that would be a little less than this of Messrs. Owen and Oakley; I suppose about $4,000. To get posted I have inquired of several real estate men about this matter; they put the improvements——

Burr objected [as] hearsay.

Q. 17. Do you know the value of the improvements, off the west side, of lot — and 9 and $\frac{37}{100}$ feet off the east side of lot 4, in said block 54, now occupied as a shoe store by Mr. Redford?

A. I suppose to put such a building as is on now——

Burr objected [as] not responsive.

Q. 18. What is it worth?

Burr objected [as] incompetent, immaterial, and irrelevant.

326 A. I judge it is worth about $4,000, maybe a little more.

Q. 19. Did you erect any of these buildings yourself?

A. Yes, sir.

Q. 20. Which one?

A. The one on the lot 6.

Q. 21. When did you erect that?

A. On that memory is deficient; I cannot say just when, but I can give it some other time when I have posted myself about it. I cannot say whether it was 3 or 4 years ago. It was put up at the same time that the city hall was, and if any of you can recollect what was the date of that hall (looking through the window of the room to the city hall, which is opposite the Government building in Lincoln)—1877.

WITNESS: The year '77.

Q. 22. Do you know, for the last three years, what would have been the fair rental value of these lots without the building?

A. No; I could not say; I never leased any property myself. Well, I have leased some property on the disputed eighty at a very low lease. All the property that I have ever leased I have leased it for about what would pay the taxes.

Burr objected [as] incompetent, irrelevant, and immaterial, and not responsive.

WITNESS: I have never leased; that is, you may say, I have never leased no business property not in the town.

Cross-examined by BURR:

Q. 23. You came here in 1871?

A. Yes.

Q. 24. Can you remember how long after was it that you erected the building on lot 6?

A. Well, I could if I was at home to refresh my memory. It was the same time they put up this other building there, and I see it is numbered '77.

Q. 25. Would you testify it as a fact that you erected the
327 building on lot 6 in '77?

A. I would not be positive about that. I could testify though positive by refreshing my memory.

Q. 26. Is it not a fact you erected this building in the year 1873?

A. No, sir.

Q. 27. Will you swear positively?

A. That I did not erect it in '73, yes.

Q. 28. That this building was erected after the year 1874?

A. I think I could swear that, positive.

Q. 29. Will you please examine your books and refresh your memory, and appear again before the examiner and tell him the date when you did erect this building?

A. I will do so.

Q. 30. All of these four buildings, on the ground, you estimate their fair cash value at $10,000 each, don't you?

A. No, sir.

Q. 31. You estimate lot 6 and its building at $10,000?

A. Yes, in making my estimate—valuation of my property—that is what I value it at.

Q. 32. What is your opinion of the value of the other three buildings and the ground?

A. Well, my opinion that way is, shortly, I should think the one with the drug store on, with the improvements on it, I should think it ought to be $9,000; about $5,000 — the improvements, $4,500 to $5,000.

Q. 33. What is the next building worth, Martha Alexander's?

A. I suppose that building is worth $4,000.

Q. 34. What is the whole premises worth, of Martha Alexander, building and real estate?

A. I should suppose between $8,000 and $9,000, something.

Q. 35. What is the whole premises occupied by the shoe store of Redford worth?

A. I should suppose it would be, probably, about the same.

328 I do not suppose there is much difference, if anything. Redford's building is about the longest, deeper than Alexander's.

BURR: A little deeper?

Ans. cont'd: I should say it would be probably worth something more; I could not say.

Q. 36. Do you know how long the walls are in your building?

A. Yes.

Q. 37. The side walls running north and south?

A. Yes.

Q. 38. How many brick are there in these two walls?

A. I cannot tell you that.

Q. 39. How high is the stone foundation to the cellar?

A. I won't say positively; I think it is over 7 feet.

Q. 40. How many perches of stone are there in the stone foundation to your cellar building?

A. I could not tell you.

Q. 41. How many yards of plastering is there in your building?

A. That I could not tell you.

Q. 42. What is the front worth—the plate glass and the iron?

A. I could not tell you that.

Q. 43. What is the roof worth?

A. I could not tell you that.

Q. 44. What is the painting worth?

A. I could not tell you that.

Q. 45. Can you give a detailed estimate or statement of any one of these buildings?

A. No, sir.

Q. 46. All you know about the value of these improvements is that you have made certain inquiries of real estate men here?

A. No sir; no, sir; I told you, in the first place, in making my estimates of my property, how I valued them; I do not go to other sources to make estimates at all.

Q. 47. You make an annual estimate of your property?

A. I generally do—a rough calculation—to see how I am running.

Q. 48. Among other things you valued this at $10,000?

A. $10,000.

Q. 49. And upon that you base your knowledge in your evidence here?

329 A. Yes; some parties may value it a great deal higher and some a great deal lower than I do.

Q. 50. You say there is a building in the rear of the premises occupied by Turner?

A. Yes, there is a warehouse.

Q. 51. Who claims to own that building?

A. That I cannot say. I know the building is there and that is all I know about it.

Q. 52. When was it erected?

A. Not within a great while; I do not remember now, but a few years ago.

Q. 53. Do you know by whom it was erected?

A. No.

Q. 54. Does not that building belong to Turner?

A. I cannot say; I do not know.

Q. 55. When were the three buildings to the east of your building erected?

A. That I cannot tell you.

Q. 56. Were they erected when you came here in 1871?

A. Well, it is my opinion there were buildings there, but there has been some other very considerable changes done since then. I do not know what they have been; I know buildings were there and occupied.

Q. 57. The grade has been altered—lowered?

A. Yes.

Q. 58. And new floors laid?

A. Been laid down some.

Q. 59. New fronts and improved?

A. Yes, there has been considerable improvements, but what particularly I could not say.

Q. 60. It leaves the three cellars east of you rather low down?

A. Now, really I could not tell you particularly about that.

Q. 61. The three buildings east of you are built upon sandstone foundations, are they not?

A. I do not know about that; I was never in one of the cellars but once, and I did not notice.

Q. 62. Have you been upstairs in the upper stories of the three buildings?

330 A. I have been in the upper stories of two of them?

Q. 63. How long ago?

A. Some years ago; I do not think I have been upstairs in either for a couple of years or so.

Q. 64. You moved a building off of lot six, did not you?

A. No; there was a building fell down on it.

Q. 65. Did you not move a frame building off of lot 6 at the time you were preparing to erect the present building?

A. There was a stone building and it fell down with Smith's building; now Smith's building was at the end of mine; it fell and jerked mine down.

Q. 66. What was the value of the building which fell down, which stood upon lot 6?

Ames objected [as] immaterial and not proper cross-examination.

A. As near as I recollect about it I gave the stone and stuff for the cleaning it out. It was of this soft sandstone.

Q. 67. To whom did you give this building?

A. I do not recollect that either. I know they had the stone hauled off back there to M street; and they lay there, I do not know how long. I disremember who it was.

Q. 68. How large was that building?

A. It was a one-story building; and I think about 50 feet deep.

Q. 69. What was it occupied for?

A. A part of the time as a tin shop; Cody used to occupy in there; you recollect that, I suppose.

Q. 70. How high was this story?

A. I will not say for certain; but I think it was 12 or 14 feet high.

Q. 71. Had a store front?

A. Yes.

Q. 72. How wide was it?

A. The same width as the present building.

Q. 73. About 24 feet?

A. Yes.

331 Redirect examination by AMES:

Q. 74. How long after that building fell down before you built the present building and had it ready for occupation.

Burr objected [as] irrelevent, immaterial, and incompetent.

A. It was down some time, but I cannot recollect just the time; I could refresh my memory, so that I could tell pretty near, but I would have to inquire.

Witness excused.

Tucker on Block 54.

GEORGE P. TUCKER sworn and examined by AMES:

Q. 1. What is your business?

A. A dealer in real estate.

Q. 2. Where do you live?

A. Lincoln, Nebraska; 1401 N street.

Q. 3. How long have you lived in Lincoln?

A. Since April 1, 1-82.

Q. 4. Are you acquainted with the value of real estate in Lincoln?

A. Somewhat.

Q. 5. Are you acquainted with the value of business property on the south side of the Government square?

A. To some extent.

Q. 6. Do you know the property that is occupied by David May in block 54?

A. I do.

Q. 7. Do you know the value of the improvements on the property?

A. I should say about $5,000.

Q. 8. What is the value of the lot without the building?

A. I do not know just the width of these lots; but I would estimate that property at $200 a foot front; you can divide that up with your lots and make them whatever they are; they are not full lots all of them.

Q. 9. Would that be your estimate for all that property in that block except in the corner lots?

A. Yes.

Q. 10. Do you know the improvements on the property where Turner's drug store is?

A. There appears to be a warehouse back there which seems to sit across the line; don't it, Mr. Little? (Little: No; I don't
332 think it is; I think it is on his line; It is on the same lot the drug store is on. A. (Continued). I should put that at $4,500

Q. 11. The jewlry store occupied by Mr. Trickey?

A. I should put that at $3,500.

Q. 12. And the shoe store occupied by Mr. Redford?

A. That is a deeper building than the other; I should put that at $4,000.

Cross-examined by BURR:

Q. 13. Have you examined these buildings closely?

A. Why, I have examined them outside; I looked them over; yes, sir.

Q. 14. Have you gone into the cellars?

A. No, sir.

Q. 15. Take the Trickey building; can you tell the depth of the building; do you know how many feet deep it is?

A. I do not by actual measurement; no, sir. I have been on both sides of the buildings—that is, on *the* each end of them.

Q. 16. Do you know how many perches of stone there is in the foundation walls of any of these stores, the Turner, Redford, and Trickey stores?

A. I do not know how many perches of stone there is in either of them.

Q. 17. Do you know the size of any of these three buildings, either the one occupied by Trickey, Redford, or Turner?

A. I know pretty near the size of them; I think the lot where Redford is [is] between 21 and 22 feet.

Q. 18. In front?

A. Yes, sir; they are all 142 feet deep.

Q. 19. I am asking just for the size of the building; how deep is the Redford building, do you know?

A. I have been informed it is 80 feet; I have never measured it. I told you that I could not tell you about that.

Q. 20. Have you made any computation as to how many
333 bricks in the walls?

A. No.

Q. 21. Any computation as to how many yards of plaster in the building?

A. No, sir.

Q. 22. And what the fronts of the building and the glass would be worth?

A. I have not figured up any items with regard to them at all.

Q. 23. Or what the roofs of them are worth?

A. No, sir.

Q. 24. You just give your knowledge of the general prices of these buildings; you have not made any estimate on the several parts of these buildings, so as to pass your judgment on these estimates?

A. No, sir; have never been inside either one with a view of forming an estimate of value, though I have been in them all a great many times.

Questions omitted in chief now asked by AMES:

Q. 26. Do you [know] the rental value for the last three years of these lots without the buildings—the ground rent; do you know what it would be?

Burr objected [as] immaterial, irrelevant, and incompetent.

A. I do not know, sir; there has not been any rented there.

Q. 27. Is there any usual rate in town for ground rent?

Burr objected [as] incompetent, irrelevant, and immaterial.

A. Not that I know of.

Witness excused.

Stuart on the Buildings and Testimony of Donovan & J. K. Dawson's Will.

A. P. S. STUART sworn and examined by AMES:

Q. 1. You are one of the parties to this suit?

A. I think so.

Q. 2. You are the man who purchased property in block 54, a building from Mr Sherwin?

A. Yes, sir; it is the west half of lot 3 and 9 feet and $\frac{37}{100}$, I think, on the west side of lot 4.

Q. 3. And from whom, if any one, did you negotiate that purchase?

334 A. I did not negotiate it with any one except the owner, Mr. Sherwin.

Burr objected [as] incompetent, leading, and immaterial.

A. Mr. Sherwin himself.

Q. 5. Did W. T. Donovan, whose testimony has been taken in this case, negotiate with you concerning that purchase on behalf of Mr. Sherwin?

A. He forced himself upon my attention two or three times and made remarks upon the property, but I wished to avoid him entirely and he had nothing to do whatever in inducing me to purchase the property, though he pretends to sue Sherwin for commission; but he had no more to do with the sale of the property than you had at all.

Q. 6. Did he say to you at the time you bought that property anything about the adverse title brought by the Dawson heirs?

A. Yes, he mentioned he could get a clear title for me, he thought.

Q. 7 Did he say for what amount?

Burr objected [as] incompetent, immaterial and irrelevant.

Question withdrawn.

Cross-examined by BURR:

Q. 8. For how much did Mr. Sherwin offer you these premises and to give you a warranty deed; what price did he say that he would sell at and give a warranty deed?

Ames objected [as] not proper cross-examination and immaterial.

A. There was nothing said about it as far as I remember.

Q. 9. How much did Donovan tell you Sherwin would sell the premises for and give a warranty deed pending the negotiation?

A. He did not tell me anything in relation to that point so far as I remember; nothing at all.

Q. 10. You and Sherwin talked about the Dawson will pending this negotiation?

A. We had some conversation about it.

335 Q. 11. Sherwin refused to give you a warranty deed at the price you paid, did he not?

Ames objected [as] not cross-examination.

A. He did not choose to give a warranty deed in the pendency of the litigation.

Q. 12. He told you he would not give you a warranty deed?

A. I do not remember certain whether he said he would not or not, but I understood very well that he would not agree to give one.

Q. 13. Did you not ask him to convey by warranty deed?

A. No; in the negotiation which we had with each other about it he gave me to understand, in the first place, he did not agree to give anything but a quit-claim.

Q. 14. What reason did he express to you why he would not give a warranty deed?

Ames objected [as] incompetent, immaterial, and not cross-examination.

A. Simply because the property was in litigation.

Q. 16. From this Dawson will?

A. Well it was in litigation in the courts.

Q. 17. You knew at the time you bought this of Sherwin of the litigation referred to?

Burr objected [as] incompetent, immaterial, and not cross-examination.

A. I knew the property I had bought—I knew the decision of the court as far as the case had gone.

Q. 18. You knew of the constructions which Giles placed, or the construction of this will?

WITNESS: Knew what?

Q. 19. You knew of the construction which Giles claimed to be placed on this will?

WITNESS: I knew——

(Question continued): That Sherwin did not have the title to the land?

A. Why it amounted to that, but I never understood what his construction of the will was—Giles'.

336 Q. 20. Before you purchased you went and read the will in the records?

AMES: I made this same objection to this question—immaterial and not proper cross-examination. To all of these questions I make that.

A. Well, I saw the will.

Q. 21. You went to the records and examined the will with a view of ascertaining in your own mind its true construction?

Ames objected [as] immaterial and not proper cross-examination.

A. No; I did not go the records, that I know of. I do not think I did.

Q. 22. How long before you purchased this deed?

A. I did not purchase any deed.

Q. 23. That you examined the will?

Ames objected [as] immaterial and not proper cross-examination.

A. I saw the will as recited in the decision of the court. There is where I saw the will—Judge McCrary's decision.

Q. 24. Do you swear that you did not go to the county records of this county?

A. Yes, sir; I do swear.

Q. 25. What other title was it that Donovan told you he could get; you say that he mentioned he could get you a clear title?

Ames objected [as] immaterial and not proper cross-examination.

A. Well, what that title was he never fully explained, as I know of. In the remarks that he made to me he intimated that he could procure—I think he mentioned your name—from you a clear title, and the sum I think he got down to in the end was ab't $800, but it was a larger sum, to begin with. How he was going to get from you the clear title that he never explained, or how he was going to get the title any way.

Witness excused.

337 The further taking of testimony was here adjourned to Monday, October 16th, 1882, at the same place.

On Monday, October 16th, 1882, the further taking of testimony in this cause was resumed in room number 3, upper floor, in the Government building, Lincoln, Nebraska, the parties being represented by counsel as heretofore.

Van Dorn on Purchase of 40 Acres of Land in Controversy and Improvements thereon.

WILLIAM G. VAN DORN sworn and examined by AMES:

Q. 1. Where do you reside?

A. South of town about a mile.
Q. 2. South of Lincoln, Nebraska?
A. Yes, sir.
Q. 3. Your son is one of the parties to this action, is not he?
A. Yes, sir.
Q. 4. Who lays claim to the title to part of the land, joins title with him?
A. Mr. Geo. W. Lashus.
Q. 5. How long have you resided in Lincoln?
A. I have been here 11 years May last since I settled here.
Q. 6. Do you reside on the 40 acres in controversy or not?
A. No, sir.
Q. 7. Do you know when that land was purchased by your son and Mr. Lashus?
A. Well, I could not exactly come to the date. I think, though, '74 or 5. I do not know which.
Q. 8. Do you know whether they put any improvements on the land since they purchased it?
A. They have broke up considerable ground—perhaps 35 or 30 acres.
Q. 9. What else have they done?
A. Put out considerable trees and have a little house on it.
Q. 10. What kind of trees?
A. Well, they are shade trees. We have some called Russian stock and shade trees planted outside.
Q. 11. What are the improvements worth, do you know?
A. I should think they are worth——

Burr objected [as] not responsive, incompetent, and immaterial.

338 Q. 12. Say whether you know what they are worth or not.
A. Why, yes; I think I could come as near to it as anybody.
Q. 13. What, in your opinion, are they worth?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. I should say they were worth at least $200, improvements put on that property.
Q. 14. Do you know who negotiated this property for your son and Mr. Lashus?
A. I did myself; they never saw Mr. Burr or any other party that I know of.
Q. 15. With whom did you make the negotiation?
A. Mr. Burr—L. C. Burr.
Q. 16. Who did he claim to represent?
A. He claimed to represent Mrs. Dawson.
Q. 17. Did you have, during the negotiation, any conversation with Mr. Burr as to the character of the title which would be conveyed for the purchase?
A. Yes, sir.
Y. 18. What was it?

Burr objected [as] incompetent, immaterial, and irrelevant, and

for the further reason that the witness' evidence on that matter has already been put in evidence.

A. Mr. Burr told me—I asked Mr. Burr about the title; he said it was perfectly good, for Mr. Dawson in his lifetime had made a will and had willed all his property, both real and personal, to Mrs. Dawson.

Q. 19. Did he say that after or before the purchase?

A. I think when we first commenced talking about the trade; I know before we bought the property.

Q. 20. Who finally completed and closed up the purchase on behalf of your son and Mr. Lashus?

A. I did; yes, sir.

Q. 21. Were you influenced in any way by this statement of Mr. Burr in making the purchase?

Burr objected [as] incompetent, immaterial, irrelevant, and leading.

A. Of course I was. If Mr. Burr had told me it was doubt-
339 ful or anything of the kind I should have backed out quicker than a snap.

Q. 22. Suppose he had not told you the title was good.

Burr objected [as] incompetent, immaterial, irrelevant, and leading.

A. I would not have bought it.

Q. 23. To whom was the deed for that property delivered.

A. Delivered to me.

Q. 24. Who delivered it to you?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. Mr. Burr.

Q. 25. Who paid over on the delivery the purchase-money?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. I did.

Q. 26. Who did you pay it to?

A. I paid $1,000 of it through the bank to the insurance company; the other $300 I paid to L. C. Burr.

Q. 27. Do you know for what purpose this money was paid to the bank?

Burr objected [as] incompetent, immaterial, and irrelevant, and not the best evidence.

A. Yes, sir; the bank held a mortgage or the insurance company had a mortgage, and they done business through the bank; they had to release that property—their claim on it and through the bank; it was done by paying them $1,000.

Q. 28. Did any one direct you to pay that money to the bank?

A. Mr. Burr must have told me so; I could not have been told by any one else. I do not recollect just now exactly how that was done.

Q. 29. What did you think about these statements of Mr. Burr as to there being true or not—about the title?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. Of course I thought they were true.

Q. 30. You believed them, did you?

Burr objected [as] leading.

[A.] ——.

Q. 31. Was there negotiations with any one else besides
340 Mr. Burr regarding that purchase?

A. No, sir; I talked once to Mrs. Dawson, but she left the business to Mr. Burr.

Cross-examined by BURR:

Q. 32. Where does the Little house stand that you say is upon that land?

A. It stands right south of where Mr. Wooley used to live.

Q. 33. Does it stand upon this 40-acre tract of land?

A. Yes, sir.

Q. 34. Who put it there?

A. There was a man by the name of Frank that the house was built for; my son furnished him the money to buy the lumber, and he nailed it up himself.

Q. 35. Did he live in it?

A. Yes.

Q. 36. Now?

A. That is, Mr. Phelps lives there.

Q. 37. Whose house is it?

A. My son's; Mr. Phelps is working for us.

Q. 38. What size is it?

A. It is a room 15 to 16 feet square, and then there is an addition to it, stables, and one thing and another.

Q. 39. Two or three stories high, is it?

A. No, sir; one story. They do not build three stories with that much money.

Q. 40. Got a cellar under it, has it?

A. I guess not.

Q. 41. Does it stand upon a stone foundation?

A. I do not know; I think it does.

Q. 42. Don't it stand upon the land so that you can move it off if you wish?

A. I do not know; I did not examine it very close to know about that.

Q. 43. Do you know how much lumber is in it?

A. No.

Q. 44. Painted?

A. I think not.

Q. 45. Got any doors?

A. Yes; two or three doors.

Q. 46. Got some windows?

341 A. Yes; I do not know how many; one or two. It is a good comfortable house for a tenant to live in.

Q. 47. What do you think the house is worth?

A. I do not know; I suppose——

Q. 48. If it is 15 to 20 feet one way, and in addition doors and windows, is it worth $150?

A. No, I do not think it is worth $150.

Q. 49. What would it be?

A. $100.

Q. 50. You have been acquainted with Mrs. Dawson—that Mrs. Dawson that you spoke of was Mrs. Editha J. Dawson, was it not?

A. I supppose so; I do not know about that; I knew Mrs. Dawson, the widow.

Q. 51. She is the person from whom you got the deed?

A. I got the deed from her; it is in her name anyhow.

Q. 52. And she lived right within a mile of you—a half a mile or some such matter?

A. I do not know how far it is, a mile or a mile and a half.

Q. 53. You have been here 11 or 12 years?

A. Yes.

Q. 54. Known her all the time?

A. I never was in her company more than once—except once.

Q. 55. When you went to see about this land?

A. I do not recollect any other time.

Q. 56. Did you get any abstract of this land?

A. Yes, sir.

Q. 57. Who made the abstract?

A. You got it for me.

Q. 58. Do you know where the abstract is?

A. I think it is at home.

Q. 59. Do you know where the abstract is?

A. I think we have got it in our papers at home. We generally take care of them that way along with the deeds.

Q. 60. Did you not swear that you went to a person of the name of Doc. Yeazel, who was then in the employ of Mr. T. M. Marquette and got the abstract of Doc. Yeazel?

342 A. Maybe I do not know about that; I did not charge my mind with that.

Q. 61. Will you not get that abstract and bring it to the reporter?

A. I can do it if you give me time.

BURR: I wish you would.

Q. 62. What is the fair rental value of this 40 acres—say, from 1874 down to the present time?

A. We did not get anything from it the last year at all. (BURR: I object to that as not responsive to the question.) We have not got any.

Q. 63. Please tell the examiner what the fair annual value of the rents, issues, and profits of that 40 acres is.

A. I could not do it.

Q. 64. Will you swear it is worth nothing?

A. I would not swear that.

Q. 65. Do you swear it is worth nothing?

Ames objected [as] incompetent and not proper cross-examination.

Q. 66. You have assisted and aided your son every year to work and till this land, have you not?

A. The first year we got the land it just lay in grass, and it was pastured by Tom, Dick, and Harry and everybody else. (BURR: I object and move to strike out the answer as not responsive.) I have been around there and seen how things were going on.

Q. 67. You have aided and assisted your son, and some of the time your son has been away and you have done it all yourself, or under your supervision, since you got the deed, have you not?

A. Part of the time I have been away; I have been in Indiana three years.

BURR: That is not responsive, and I move to strike it out for that reason. I now ask the reporter to ask the last question.

Question 67 repeated by the examiner.

343 A. My answer to that is I was not here; I was gone three years of the time to Indiana.

Q. 68. Tell the examiner what is the fair annual value of the rents, issues, and profits of that land during the time you were here.

Ames objected [as] incompetent and not proper cross-examination.

A. By taking it up year by year I could answer this way: The first year we got that land it was waste; nothing was on it; it was grass, pastured by anybody and everybody; then during this time grass was free; then after that I went to Indiana and was gone until last year.

Q. 69. Gone to last year?

A. I believe a little over a year.

Q. 70. You swear you have been gone from '74 or '75 to last year, do you?

A. I might have been home part of a year; I think I came home during the summer.

Q. 71. You have been absent 6 or 7 years?

A. No; I was absent three years.

Q. 72. During the four or five years you have been here what was the fair annual value of the rents, issues, and profits of that land?

A. I cannot answer that question; I can answer what it is worth now.

Q. 73. What has it been worth the last three years?

A. There has nothing been raised on it until this year except the grass.

Q. 74. Then you swear that the value of the rents, issues, and profits for the last year were nothing?

A. Last year there was nothing raised on the ground at all; only the man intended to raise it.

Q. 75. Then it was worth nothing?
A. You recollect last year was the drouth.
Q. 76. Then it was worth nothing?
A. This year it was a pretty good crop.
Q. 77. Then it was worth nothing?
344 A. I do not say this year, but previous years.
Q. 78. What do you say this year?
A. I should say this year it is worth $50 or $60.
Q. 79. What was it worth two years ago?
A. It was not worth anything.
Q. 80. I did not ask you what the value of the stuff you raised was. I ask you what was the value of the use of the 40 acres of land in this neighborhood?
A. I am not familiar. I do not recollect any person making bargains.
Q. 81. You own 40 acres adjoining this?
A. I own ten acres cornering with it.
Q. 82. Do you swear since 1874 or '5 that the use and occupation and rents of your ten acres have been worth nothing?
A. No, sir; I have got a great deal of fruit on that place—apples, pears, cherries, peaches, and small fruits of every description.
Q. 83. What has been the value of your 10 acres since 1874 and '5?

Ames objected [as] incompetent, immaterial, and irrelevant.

A. I do not know.

Re-examined by Mr. AMES:

Q. 84. Who procured the abstract; did you or Mr. Burr?
A. Mr. Burr.
Q. 85. What did you pay for that land, Mr. Van Dorn?
A. $1,300.
Q. 86. Do you know what it was fairly worth at that time?

Burr objected [as] irrelevant and immaterial.

A. It was not worth any more than that.
Q. 87. What was it fairly worth?
A. I should think it was worth $1,300.
Q. 88. Do you know what it is worth now?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. Some say it is worth $50 per acre.
Q. 89. Do you know or not?

Burr objected.

345 A. I do not know; there has no property been sold.

Witness excused.

Little's Building when Erected.

S. W. LITTLE retook the stand and testified:

1. I am ready to answer the question about the time that building was erected. It was the 1st of May, '78, that May went into the building.

AMES—2. Was the building erected the preceding winter or spring?

A. It was that spring, I suppose, or maybe in the winter some, but it was then it was finished—ready for occupation.

(Witness excused.)

Lansing. Value of Property in Block 54.

J. F. LANSING recalled and examined by AMES:

Q. 1. Do you know the value of the property in controversy in block 54 in this city?

A. I expect I do.

Q. 2. Will you give the reporter the value of each of these lots and buildings as they stand?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. Why, the lots are worth, I should say, about $5,000 apiece.

Q. 3. Without the improvements?

A. I would say they run less than 25 feet there; I should say Mr. Little's was worth perhaps $5,000 sure, and the rest not quite as much, say $4,500. They are 18 by 142 feet. Mr. Little's is 25 by 142.

Q. 4. That is the valuation of the lots without the improvements?

A. Yes, sir.

Q. 5. State the value of the improvements on these lots.

A. Why, Mr. Little's is worth about $5,000, as near as I could judge, and the next one this way is worth at least $4,500; that is a little deeper than the other one.

Q. 6. Which one is that?

A. The Turner building.

Q. by BURR: Are you speaking about the value?

A. Yes.

Burr objected [as] incompetent, irrelevant, and immaterial.

346 Q. 7. The one occupied by Trickey's jewelry store?

Burr objected [as] incompetent, irrelevant, and immaterial.

A. I should say in the neighborhood of $4,000—and the other one the same; they are about one depth.

Q. 8. That is the one occupied as a shoe store?

A. Yes.

Q. 9. Do you [know] what the rental value of these lots would be without the buildings—the ground rent?

Burr objected [as] incompetent, irrelevant, and immaterial.

A. I don't know — I am prepared to say what would be the ground rent. I have never had occasion to rent ground in that way. I

could not say very well what the ground rent would be, but I could approximate it.

Cross-examined by BURR:

Q. 10. Do you know—taking Little's building—do you know how long it is, and how deep it is?

A. Yes, sir.

Q. 11. How deep is it?

A. 100 feet.

Q. 12. How high are the walls?

A. 10 to 12 feet—12 feet in the first ceiling and 10 the next.

Q. 13. How many brick are there in the walls?

A. I do not know, sir.

Q. 14. Are you acquainted with the price of brick per thousand?

A. Yes, sir.

Q. 15. Do you know how high the stone foundation is?

A. I do not know as I do, to an inch. I do, pretty near.

Q. 16. You cannot tell how many perches of stone there is in the foundation?

A. Not unless I went and measured them.

Q. 17. Do you know what the front is worth to the building?

WITNESS: The front and the glass outside without any brick?

BURR: Yes.

A. I know pretty near what they are worth.

Q. 18. Have you made any detailed examination of any one of these buildings?

A. No, sir.

347 Q. 19. You cannot tell how many bricks there are in any of these different stores?

A. I cannot tell how many brick.

Q. 20. It is only from looking?

A. My general knowledge is not from just looking; it is from building myself and from general knowledge myself of such stores.

Q. 21. But not from making a detailed estimate of the buildings or any of them?

A. No, sir.

Q. 22. Is Trickey's building and the building occupied by the shoe store the same depth?

A. They are not; I made a mistake there. The Trickey building is the short building; the other one I recollect there was a piece put on the same as the other.

Q. 23. One is 20 or 25 feet longer than the other?

A. One is 80 and the other is 60.

Q. 24. So your estimate of the Trickey building would be lower than that?

A. Yes; a trifle lower.

Q. 25. In making your estimate of $4,500 on the premises occupied by Turner, does that include the warehouse in the rear?

A. No, sir; the warehouse Mr. Turner built himself; I understand there is nothing about that.

Q. 26. What is the valuation of these stores, lots, and buildings,

and everything just as they stand; take S. W. Little's building, what is it worth, the building occupied by May?

A. I guess it is worth $12,000; I think it would sell for that.

Q. 27. And of course the real estate would be worth $12,000 less what the building is worth?

A. Well, no; I do not get at it in that way, because when parties come to buy they find a tenant in it, and they look for an in-
348 vestment on $12,000, and the rent would bring it. To come to cash figures, it would not figure that if you get the lot and the cost of the building; if you mean the right down cash value of the lot and the building, I would not say but $10,000.

Q. 28. What is the valuation of the Turner store and lot?

A. That would, perhaps, come something less. It is not as deep as Mr. Little's by 20 feet.

Q. 29. What would it be worth, $9,500?

A. It would be worth $9,000.

Q. 30. And the other two would be worth $9,000 in your opinion?

A. Excepting the Alexander building; that is shorter; there ought to be at least $500 difference between these two.

Witness excused.

The further taking of testimony was here adjourned to Thursday, the 19th day of October, 1882, at the office of Messrs. Harwood & Ames, attorneys-at-law, Lincoln, Nebraska.

On the aforesaid Thursday the further taking of testimony in the cause was further adjourned until Saturday, October 21, 1882, at the office of the aforesaid Harwood & Ames.

On Saturday, October 21st, 1882, at the office of Messrs. Harwood & Ames, attorneys-at-law, Lincoln, Nebraska, the taking of testimony in the cause was resumed, Mr. Ames and Mr. Hall appearing for the parties S. W. Little and others, and Mr. L. C. Burr for the parties Ezekiel Giles and others.

Hawley as to W. ½ S. W. 19, 10, 7, Land in Controversy.

ALLEN W. HAWLEY sworn and examined by AMES:

Q. 1. You are one of the parties in this case?

A. I believe so; yes.

Q. 2. Where do you reside?

A. In Lincoln precinct.

Q. 3. How long have you resided in Nebraska?

A. Seven years last March.

349 Q. 4. Have you lived at Lincoln all the time?

A. All the time.

Q. 5. Is the west half of section 19, in township 10 north and range 7 east, the land in controversy here, in which you claim an interest or title?

A. Yes.

Q. 6. When did you purchase that land?

A. I acquired my title April 4th, 1878.

Q. 7. When did you negotiate the purchase of it—when did you make the bargain?

A. Well, it was probably near two weeks—two weeks or ten days—previous; I cannot give the exact date.

BURR: [Q.] 8. When?

A. April 4th, '78, when I got my title.

Q. 9. Did you have any conversation with L. C. Burr about the title?

Burr objected [as] incompetent, immaterial, and irrelevant, *and* he was *the* buying his title of an insurance company, or some trustee of an insurance company, his grantor *being* holding the land for the Union Trust Life Insurance Company on trust?

A. I did.

Q. 10. You may state, in your own way, what that conversation was and when it was.

Burr objected [as] incompetent, immaterial, and irrelevant.

WITNESS: Do you want I should state how I came to have any conversation?

AMES: State what the conversation was and how you came to have it.

A. I asked Mr. Burr in reference to the title to the piece of land in question, and he considered it good. He said he had a short time previous written—I think it was to Lombard, Jun'r—that he had written to him in reference to that, and he had stated to them he would perfect the title of any defect for $125, and I could not be positive now whether I asked him whether he would do it for me or not. He said he would do that for me—enter into a contract.
350 That was done before I had demurred. If I may state, I had made a sort of verbal contract with Mr. Rood, who I understood to be the agent, and when I came to get the land I found that a man—there was a man [who] had taken possession of it, and I told him I wished he would let me off, and he said he had forwarded my proposition and they had accepted it. I could not be positive about that, quite, but at any rate he took $100 less for the property in consideration of that defect, and I then told him that I would not draw the writings till I had made a contract with Mr. Burr. I did so, and then we drew our writings.

BURR: We move now move to strike out all this evidence because the witness does not say that he claims to have a written contract, and the writing is the best and the only original evidence.

WITNESS: I could state with reference to that contract; that contract is lost; I have not seen it since C. C Burr had it.

Q. 11. Have you tried to find it?

A. Mr. C. C. Burr has searched for it.

Q. 12. That was the contract?

A. Yes; with L. C. Burr.

BURR: No; Burr and Webster.

WITNESS: Yes; but my contract was made with you.

Q. 13. Did this conversation with Mr. Burr influence you in any manner in purchasing the property?

Burr objected [as] incompetent, irrelevant, and immaterial, and leading.

A. Yes; it did.

Q. 14. How did it influence you?

A. Well, I objected to buying this property till I had this contract with Mr. Burr, and I talked with him about it. Mr. Rood referred me to Burr.

351 Q. 15. What did you pay for the land?

A. $2,425.

Q. 16. Do you know what its fair market value was at that time?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. I considered it——

Q. 17. Answer "Yes" or "No."

A. I regarded it as very cheap property at that time or I should not have bought it; others made the same remark.

Q. 18. I ask you if you know what the value of the land is now?

A. I have my opinion of it—that I think I know.

Q. 19. What in your opinion is its fair market value now?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. I have sold a portion of it for $60 an acre, and I regard it as worth that to-day.

Cross-examined by BURR:

Q. 20. You say you made a contract with L. C. Burr?

A. I made it with L. C. Burr; but really when it was signed it was with L. C. Burr and Webster.

Q. 21. Webster & Burr as law partners?

A. I presume it was.

Q. 22. In pursuance of that contract did they do anything for you?

A. Yes.

Q. 23. What did they do?

A. They prosecuted to perfect the title in my name.

Q. 24. Perfect the title in what respect?

A. Well it was—so far as they prosecuted it—it was in reference to a tax-title.

Q. 25. Your whole contract with Webster & Burr was with reference to a tax-title?

A. The contract; I think it was.

Q. 26. Walsh & Putnam's old tax-title?

A. That related to the 40 acres of land.

Q. 27. And the conversation you held with Burr & Webster related only to this tax-title?

352 A. I think that L. C. Burr told me he considered the title good for this piece of land.

Q. 28. Did the written contract relate to anything else but the tax-title of Walsh & Putnam?

A. I think not.

Q. 29. And the question was whether Walsh & Putnam held the land under the tax-title?

A. That related to the 40 acres of land.

Q. 30. That was the dispute in the action?

A. In the first place I asked a question of you in reference to the title to the land. You said you regarded it as good, and that you had written to Mr—what is his name—that you would perfect the title for so much. I would not say that you——

Q. 31. That is, that it would cost $100 or $125—whatever you say it is—at the most to pay up and remove the tax-lien from the property?

WITNESS: Furthermore you observed, in the first place, that Mrs. Dawson was interested in perfecting that title. You was her attorney and that would be her consideration. Mr. Webster objected at first she was nothing to it, but you said you was her attorney.

Q. 32. In pursuance of that contract Webster & Burr brought suit and removed the tax-title for $125?

A. Yes.

Q. 33. And put the thing into court and removed the tax-title in the district court of Lancaster county, Nebraska; is not that a fact?

A. I suppose it amounts to that. I paid a certain sum into court, and I suppose you did; that is what I judge. I do not think; I know I paid the costs—I think I paid the costs.

Q. 34. At this time you were arranging with the insurance company; were you not?

A. Yes.

Q. 35. You bought it under a contract?

A. No written contract.

Q. 36. You did not receive a deed from the company?

A. Yes.

Q. 37. In the first place?

A. Yes, sir.

353 Q. 38. And gave them back a mortgage deed?

A. A mortgage deed.

Q. 39. At the time you entered into this contract with Webster & Burr for the removal of this tax-lien, what was said about the Dawson will, if anything?

A. I was not aware that the land was conveyed by will at that time.

Q. 40. L. C. Burr and J. R. Webster talked nothing about the Dawson will at that time?

A. No, it was some time after before I knew of that will.

Q. 41. You were in the same situation as I was in; you were in as much ignorance of the Dawson will at that time as L. C. Burr and J. R. Webster?

A. I guess I was as much, and maybe a little more.

Q. 42. At the time this controversy about the Dawson will came up, did not L. C. Burr come to you and have a conversation with you about the will, long after you got your deed?

WITNESS: Do you want me to relate that conversation or just answer that question?

BURR: Just answer the question.

A. I do not know what you are getting at; I rather think I went to your office; that is my impression.

Q. 43. C. C. Burr's office?

A. I guess it was.

Q. 44. Did I not then advise you and then tell you not to pay any more money to the insurance company for the land, and to refuse to pay them on account of this matter, and you thought you had bought your title?

A. No, I do not recollect anything of that kind; I will tell you, perhaps——

Q. 45. At that time did you not say that you had only paid $500 or about that sum on the purchase price of that land?

A. I will tell you, Mr. Burr, or would you rather have it as you ask questions?

BURR: You may relate.

Ans. cont'd. In speaking about that you told me that you
354 thought I had a warranty deed—a warranty deed from——

BURR: I suppose I did.

Ans. cont'd. And afterwards I took that deed up to C. C.'s, and he thought it was a warranty, looking over it; and finally Mr. Kelley, his partner, said it was not. The form was was an Illinois form; and the words "quit claim" was not in the deed. And there was some sort of a guarantee; as I understood it merely guaranteed their title. It was a new form to me. I thought I had got a warranty deed, but if I had it was through their mistake. I did not suppose I was to have a quit-claim deed because there was any defect in the title aside from that, because if I had—if they had only proposed to give me a quit-claim deed, and there was no defect of that kind, I do not think I should have bought the property. I supposed the title was good in every way but that; I asked you that question, and you said "Yes."

Q. 46. Did you pay Webster & Burr anything; did you approach them to look up this title and give you a legal answer as to the title to this property?

A. No, sir.

Q. 47. Did you furnish any abstract to Webster & Burr and ask them about this property?

A. No, sir.

Q. 48. Did you employ them to investigate the title and give you an opinion whether it was good or bad?

A. It may be——

Q. 49. Did you employ Webster & Burr to investigate the title and examine the title to this land at the time you purchased it, and give you an opinion whether the title was good or not?

A. If I did I did it in that contract.

Q. 50. In a written contract you had?

A. It was like this——

Q. 51. Wait a minute; I want an answer to my question; I want to know what we have done for you. Did you employ Webster and Burr, or either of them, to examine your title at the time you was purchasing this property from Van Gasbeck as trustee for the Union Mutual Life Insurance Company?

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A. I would not say that I did.

Q. 52. Will you say that you did?

A. I could qualify it a little and say it.

Q. 53. I want to know if you did. I want to know if you employed Webster and Burr, or either of them, to examine the title you was buying from Van Gasbeck?

A. No; so far as that question goes, I did not.

Q. 54. Was Van Gasbeck your grantor?

WITNESS: I did not employ you to examine; it was like this.

Q. 55. Did you submit to them any abstract and ask them to pass upon the title to this land for you?

A. No.

Q. 56. Was Van Gasbeck your grantor; was he the man you was purchasing from at that time?

A. Well, I will say I do not know.

Q. 57. You did buy any title from Webster & Burr at that time, or either of them?

A. They agreed to perfect the title.

Q. 58. Was you buying any title from Webster & Burr at that time?

A. Well, I will say I do not know.

Q. 59. Did Webster & Burr agree to do anything but professional service in removing the tax title?

A. Webster—Mr. Burr said he would perfect the title for $125.

Q. 60. Perfect it from what?

A. He did not say what to begin with.

Q. 61. Have you hunted for this contract you say you have from Webster & Burr?

A. I got Mr. C. C. Burr to look for it in his office, and the boy looked for it; and the boy said that L. C. Burr had the contract last and never returned it.

BURR: I did not ask what L. C. Burr did, and move to strike that out.

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WITNESS: I am in the habit of telling the whole story full and complete.

Q. 62. Have you asked anybody but C. C. and his boy to hunt it up?

A. Yes.

Q. 63. Will you examine your papers and files and bring to the examiner here the contract you say you have with Webster & Burr?

A. I do not think I have anything of the kind.

Q. 64. Webster & Burr were a firm of lawyers, were they not, doing business in Lincoln at that time?

A. I suppose they were.

Q. 65. Did not Webster & Burr agree with you that for $125 they would remove this tax lien?

A. Yes.

Q. 66. Did they agree to do anything more than that?

A. L. C. Burr told me he he would give a good title for $125, and then he made a contract.

Q. 67. You say this contract will say that?

A. I cannot be positive to every word in that contract.

Q. 68. You won't say that?

A. No; in a general sense I do say that.

Q. 69. Will you say that L. C. Burr warranted the title to this land out here for $125?

WITNESS: In the contract?

BURR: Yes.

A. I would not say that.

Q. 70. Will you say he warranted the title in any respect for $125?

A. I will swear he said he would give me a good title to the land for $125. How could he think I was——

Q. 71. You remember he used these words and no other?

A. Yes, to begin—— Then he went on——

Q. 72. Did you pay $125 then?

A. No.

Q. 73. Did he agree at any time, in writing, to make you a good title in writing and warrant your title you bought from Van Gasbeck for $125?

357 A. He did not refer to Van Gasbeck, nor anybody else that I know of, but he said he considered the title to that land to be good, and that time, as I understood it, he could remove that and not pay one solitary cent.

Q. 74. Remove what?

A. The defect regarding——

Q. 75. What was that defect?

A. When you made it then you got it to the tax-title, but your first expression was that the title was good, and you gave me assurance of that; I want to say that——

Q. 76. Who was Mr. Rood?

A. A man doing some business; the same man doing business with Hardenburgh.

Q. 77. He was the agent of the insurance company, was he not, you were purchasing the land of?

A. Yes.

Witness excused.

Beach on Auction Sale.

J. T. BEACH sworn and examined by AMES:

Q. 1 Where do you reside?

A. I live on T and 16th streets, Lincoln, Nebraska.

Q. 2. How long have you lived in Lincoln?

A. I have lived here about 14 years.

Q. 3. What has been your business?

A. I have farmed awhile and been draying awhile; draying at present.

Q. 4. Do you remember a public sale of lots in this town in behalf of Editha Dawson?

A. I do, sir.

Q. 5. Were you present at that sale?

A. Yes, sir.

Q. 6. In what capacity?

A. They hired me to drive a carriage to carry the auctioneer and clerk down there.

Q. 7. Was Mr. L. C. Burr down there?

A. Yes, sir.

Q. 8. Did you hear him make any public statement in reference to the title at that sale?

A. Some parties asked while the sale was going on or just before——

358 Burr objected [as] not responsive to the question.

AMES: Answer that question, "Yes" or "No."

A. Yes, he did.

Q. 9. Do you know in what capacity Mr. Burr attended that sale?

Burr objected [as] incompetent, irrelevant, and immaterial.

A. Yes, I know.

Q. 10. What was it?

A. Attorney or agent; I know at least I paid him some money for her; he was the one that notified me; I owed some money and I paid it to him; he drawed up a contract.

Q. 11. State what statements he made regarding the title.

Burr objected [as] incompetent, immaterial, and irrelevant, fixing no time, date, or place, nor that any of the defendants were present or relied on any supposed statement.

A. He stood up in the buggy or carriage where he was and said the property was all clear, the title would be good, clear of taxes and everything, and there would be a warranty deed given, and a certain portion paid down and a certain portion run three years; that is the terms; I bought some and others bought that way; the title would be good.

Q. 12. Did he say anything in reference to Mrs. Dawson's connection with the matter?

Burr interposed the same objection as to question 11.

A. Nothing, only that the estate was in debt, was owing an amount of money, and this property she had perfect authority and liberty to sell *this property;* it was her property and gave her full liberty and power to sell the property and the deed would be good.

Q. 12. Do you know when that sale took place?

A. Well, I could not tell you just the year now; if I had my papers here; I bought some land.

Q. 13. Whereabouts was this statement made?

359 A. It was made about two blocks from where Sawyer lives; it is where I bought some lots.

Q. 14. In what direction from the capitol?

A. Southeast, towards Fitzgerald's and Sawyer's.

Q. 15. Was the statement made more than once?

A. Well, I would not be positive now whether he made it more than once, but I am certain of once, though.

Q. 16. Was there a sale of property in South Lincoln at that time?

A. Yes, sir.

Q. 17. Were any statements or representations made there?

A. Not as I recollect of it now.

Witness excused.

Roberts' Improvements in Block 54, *and Cross-Ex'd as to Lots in South Lincoln.*

ARTEMUS ROBERTS sworn and examined by AMES:

Q. 1. Where do you live?

A. I live near Lincoln.

Q. 2. How long have you lived there?

A. 11 years and over.

Q. 3. What is your business?

A. Architect.

Q. 4. Do you know this property in controversy; that portion of it that is situated in block 54?

A. Yes, sir.

Q. 5. Do you know the buildings situate on that property?

A. Yes.

Q. 6. Do you know the character of the foundation and basement walls of the buildings—the material and structure?

A. Yes; I have examined them recently.

Q. 7. State what is the character and material, and durability and structure, and all that sort of thing—suitableness for the purposes for which they are used.

A. The foundation of Mr. Little's building is a good substantial wall of limestone. The foundation of the other buildings were made originally of sandstone, and afterwards the cellars were sunk deeper, and the floors laid down to correspond to the grade

360 of the street, and limestone walls were built inside of the sandstone walls to retain them, and three feet above the cellar floor, so that now the sandstone walls are entirely free from any contact with moisture, and are entirely secure.

Q. 8. When did you make this examination?

A. I made it 2 or 3 days ago.

Cross-examined by BURR:

Q. 9. Are you acquainted with Eliza W. Pillsbury?

Ames objected [as] not cross-examination.

Q. 10. Are you acquainted with a lady of the name of Pillsbury, one of the defendant—plaintiffs in this action?

A. No; I do not know any one who is plaintiff in this action of that name.

Q. 11. Are you acquainted with a Miss or Mrs. Pillsbury?

A. Yes; I am acquainted with a lady of that name who lives in Illinois.

Q. 12. You have a deed to a certain lot in Dawson's addition to South Lincoln, have you not?

A. Yes, sir.

Q. 13. Can you give the number of the lot and block?

A. I have 6 lots there—the north half of block 41 in Dawson's addition to South Lincoln.

Q. 14. Eliza N. Pillsbury; that is her name; what is her name?

AMES: What is whose name?

WITNESS: Who are you asking about?

Q. 15. You are her agent out here?

A. No, sir.

Q. 16. Has she got any agent here?

A. No, sir.

Q. 17. Has she got any attorney out here?

A. Not that I know of.

Q. 18. Did you execute a mortgage on lots 1, 2, 3, 4, 5, and 6, in block 41, in Dawson's addition to South Lincoln, to Eliza N. Pillsbury?

Ames objected to this and all of these questions as not cross-examination and leading.

A. No.

361 Q. 19. Did you not give a mortgage on this half block to Eliza Pillsbury?

A. No, sir.

Q. 20. Did you not give one to Mrs. Pillsbury?

A. Yes, sir.

Q. 21. What is her name?

A. Her name is—initials are L. N.—Louisa, I think—I do not know.

Q. 22. She holds a mortgage of these lots from you to her?

A. She held a mortgage on these lots.

Q. 23. From you to her?

A. Yes; the mortgage has been cancelled, but I have not had the cancellation recorded.

Q. 24. When did you pay her the full amount of this mortgage?

A. Within a few weeks.

Q. 25. At the beginning of this action, then, she did hold a mortgage upon this half block?

A. I expect so, at the time of the beginning, that and other property connected with it.

Q. 26. Did you ever authorize or employ any attorneys to begin this suit here in her name?

A. No, sir.

Witness excused.

Burr on Valuation with Mrs. Dawson, and Auction Sale.

L. C. BURR recalled and examined by AMES:

Q. 1. When were you first employed by Mrs. Dawson as her agent and attorney with reference to her estate—that is, the estate in controversy?

A. Well, I have looked up the date of that, but it has now escaped my memory; I cannot give the exact date, but the action I brought against S. B. Galey for her would show.

Q. 2. About what time as near as you can remember?

A. I would say, to the best of my recollection, in fall of 1874; winter or spring of 1875 was my first dealing with Mrs. Editha J. Dawson.

Q. 3. What was the nature of that employment?

362 A. Well, the way I got to be her attorney was that I purchased the law library, and I might say some of the good will anyhow of S. B. Galey, who is a practicing attorney; when I bought his law library and the rest of his office he turned over Mrs. Dawson as a client to me, or turned over her business to me to act as her agent.

Q. 4. What was the nature of the business or employment—what did you do?

A. I never had any conversation with her as to what business I should do.

Q. 5. What did you do in the course of the service?

A. I attended to anything she requested me to do.

Q. 6. What did you do?

[A.] Negotiated the sale of her property and looked after her business; whenever she wanted me to sue a party I brought action and sued them; and whenever she wanted me to sell a piece of property for her I done that.

Q. 7. During the time you were in her employment you negotiated the sale of nearly or quite all of the estate of Jacob Dawson that had not already been disposed of at the time you were employed as her agent?

A. All of the estate of Jacob Dawson had been sold by Mr. Galey; all the property left under his will (as I have since found out) was sold by Mr. Galey under a written power of attorney by Mrs. Dawson to him; he sold all of it but some scattering lots—some of the poorest lots in Dawson's addition to South Lincoln; there was a very few of these lots left.

Q. 8. Those you negotiated yourself or most of them?

A. No; I done this; when I took charge of her business there was large judgments against her, and she was owing some debts; I advised with her, or else her sons told me to advertise; I done it for

her—assisted in doing it for her with her sons—advertised
363 these scattering lots in South Lincoln, together with lots she owned in Capital addition, which was her own property; advertised these lots through advertisements; had an auction sale of them, and sold them; I think that was in 1877, perhaps.

Q. 9. Did you sell out all that were left?

A. We sold a good many of them. Some we could not sell. They brought nothing; they were in sloughs, and did not bring anything.

Q. 10. Did you negotiate any at private sale?

A. Yes, I think I negotiated a dozen or two dozen of these lots—not to exceed two dozen, I do not think, because there was not so many in Dawson's addition to South Lincoln.

Q. 11. When you took charge of the business, the fact is Mrs. Dawson herself had no business capacity or experience—that is the fact?

A. No, sir; I always found her to be quite a shrewd person, quite a shrewd business person.

Q. 12. As a matter of fact the negotiation of sales and business was entrusted to you from the time that you were employed?

A. Her sons had passed age—had passed majority. Wm. R. Dawson, at the time Galey turned over the business—he did the most of it. He consulted with me, he advised with me, all such things as that. He was in my office a good deal, and I helped him all I could.

Q. 13. You advertised these public sales, and also advertised the fact that the estate was for sale in the newspapers?

A. I do not think I had anything to do with the advertisements; my name did not appear, or anything of that kind.

Q. 14. Very sure?

A. Yes, I am very sure; I will swear very positively that my name did not—that it was all Mrs. Dawson's.

Q. 15. How long after you were employed by Mrs. Dawson and the heirs before Albert came of age?

A. It could not have been very long, because he is 27 or 28 now.

364 Q. 16. Hampton—was he living then?

A. No; I never saw John Hampton.

Q. 17. But William and Albert had supervision of this business with you, or consulted with you; you say that?

A. I never—well, Wm. R. Dawson was in my office a great deal. He consulted me about it; and he would go and talk with his mother.

Q. 18. Did you discuss with him the propriety of making these sales, or did he direct it?

A. It is hard for me to say whether he directed it or not.

Q. 19. He knew of it?

A. Oh, yes; he participated all which is possible for an owner to participate in a sale.

Q. 20. Both he and Albert?

A. I am satisfied I advised the sale at auction; told them it was the only thing they could do.

Q. 21. The children were all aware of it—agreed and consented to it?

A. I do not know anything about that.

Q. 22. As far as it was possible?

A. I do not know anything about that; some of them were young children.

Q. 23. But these boys—they did?

A. I would say Wm. R. knew about it; and he was there at the sale.

Q. 24. How old was William R. at that time?

A. It is hard for me to tell what his age was at that time; he had passed his majority a couple of years, perhaps.

Q. 25. How old was Albert?

A. Albert Dawson must have been about two or three years younger than he was—maybe four years; I do not know. I guess at it from their appearance.

Q. 26. You say you never knew John Hampton Dawson?

A. No, sir; I never saw him or knew him. He died before I came to this country; he must have died before the year 1873.

Q. 27. What was his age at the time of his death?

A. He was a young man; that is all I know about it.

365 Q. 28. Where were they residing at the time of the sale?

A. They were residing on part of the land; I do not know the description without I was to look it over; they were residing on what you now call Capitol addition to Lincoln.

Q. 29. Fitzgerald's place near?

A. Yes, right above Sawyer's.

Q 30. In the house she built immediately after her husband's died, or was it in the brick house?

A. They were living at the time I took the business in the brick house that Galey had built them, and it is now the Fitzgerald property; Roberts was architect of the house, and he knows about the building of it.

Q. 31. Do you have any memoranda so you could tell what lots were sold during this time?

A. Why, I do not believe I have; I think that [the] Dawsons have that.

Q. 32. You conducted these sales in person—that is, you were present directing and overseeing them.

A. I think I was present at the sales of the Capital addition.

Q. 33. You think you were not present at the South Lincoln sale?

A. I think I was not actually present at that.

Q. 34. Who transacted the business of settling up after the sales there—receiving the money and delivering the deeds?

A. There were not many deeds to deliver or very much money to get.

Q. 35. Who did the business?

A. Mr. Wm. R. Dawson and myself.

Q. 36. And you say that nearly all of that property was closed out at that auction except a few lots?

A. Yes, what few was left; all the cream of this property had been sold by Mr. Gayley before I had anything to do with the property at all.

Q. 37. Which of the children of Jacob Dawson were living
366 at that time? Who are now dead?

A. Two of them—Evaline Dawson Knicely and William R. Dawson. There are only three now living that I know anything about—Albert, Minnie, and Melita.

Examined by HALL:

Q. 38. Do you recollect testifying in a case where John Gillespie was plaintiff and Sawyer was defendant, in regard to the value of the lots where Sawyer now lives, in the case in the district court tried at the February term of the court, 1882?

A. I recollect that case; yes.

Q. 39. Do you recollect you was a witness in that case?

A. Yes.

Q. 40. Do you recollect that you testified to the value of the lots where Sawyer now resides?

A. Now, my recollection is, they wanted to know the value of these lots before I lived in this country, and I did not.

Q. 40. Do you recollect that you testified of the value of the lots at the time you sold them to Mr. Sawyer?

A. Well, I think I did.

Q. 41. Do you recollect you based your opinion of the value of those lots upon the fact that there was a sale about that time of lots of Mrs. Dawson in South Lincoln?

A. I know I said I based my opinion of the value on Capital addition, because that is Capital addition.

Q. 42. You did not swear there, then, that you based your idea of the value of these lots largely upon the fact that about that time, or maybe a little after that, you had sold a large number of lots in South Lincoln for Mrs. Dawson?

A. I did not compare South Lincoln with that, because South Lincoln is a mile or a mile and a half from that; I know I said nothing about that distance then in that statement.

367 Examined by AMES:

Q. 43. Give us your notion about how many lots there were in South Lincoln in the fall of '74 or spring of '75, when you came into the employ of Mrs. Dawson that were unsold.

A. Without referring or refreshing my memory; I have got an idea based only on recollection; I can give you that.

Q. 44. Well?

A. Well, I would say 35 lots out of 80 acres of ground. The lots are 50 feet by 142 feet. There is about 36 lots to a block, ain't there—about 36 lots to an acre of ground, including streets and alleys?

Ames here ceased to examine, and witness testified as on cross-examination.

Q. 45. I would like to say this. I never knew about the Dawson will, nor of any dispute or flaw of *any dispute of* the title to Dawson's addition to South Lincoln or any of the lands that passed under this will until one Herman Shaberg came to me and wanted a quit-claim deed from the Dawson heirs to his building in block 51, I think, and I will get that deed that finally I gave; the Dawson heirs gave a deed to Shaberg at that time; the date of that deed shows the time I first knew anything about the contents of Jacob Dawson's will. I think that was in the year 1879, but the date of the deed will show the exact day of the month and the year; it was long after I had anything to do, and after my relations with the Dawsons had ceased. When I had learned of the Dawson will I advised Mrs. Dawson thereafter on any property where parties came to her to give only a quit-claim deed, which advice she has always followed from the date of that deed. I never acted as counsel or attorney or agent for any of the Dawson heirs to my recollection; I only acted for Mrs. Dawson.

368 Redirect examination by HALL:

Q. 46. Do you say that at the time you first found out from the date of this Shaberg deed that was after you had ceased to act as attorney for the Dawsons?

A. Well, it was about the time they left here; and when they left here I ceased to act for them.

Q. 47. Have you not been their attorney since that time?

A. There might have been some old matters pending in which I still acted for them—for her, I guess; I do not remember of anything—any old matter that was left that I still acted for them; I think that everything was about cleaned up.

Q. 48. Is not it a fact that since that time and since the year '79 you have acted as attorney for them in selling lands under judgment and reviving judgments in their favor?

A. Well, I would not say that I did not, but I may have. I know if anything they would write to me to attend to for them of course I did it.

Q. 49. Is it not a fact that she never has had any other attorney except you?

A. No, sir; I think the counsel for plaintiff in this case has been her attorney since I was.

Q. 50. Prior to the commencement of this suit?

A. Through Mr. Ellis; he is down in Nebraska City now; I presume you know about him.

Q. 51. Is it not a fact that prior to the commencement of this suit you have been her only attorney or counsel in Lincoln?

A. No, sir; I know of one suit in which J. R. Webster was her attorney.

Q. 52. That is since the commencement?

A. I know that Mr. Galey and Mr. Reavis were acting for her as attorneys.

Hall moved to strike out this answer as not responsive.

369 Q. 53. I ask you if, prior to the commencement of this suit, had she any other counsel here but you?

A. Yes, sir.

Q. 54. Since you were first employed by her?

A. Yes, sir.

Redirect examination by AMES:

Q. 55. Do you know how much older John Hampton was than William?

A. No, sir; I do not.

Q. 56. You do not know when he attained his majority?

A. I do not; I would say I have seen the family Bible record of this family; it shows, I saw therein, that John H. Dawson was dead, but just the date when he died or how old he was I have forgotten.

Redirect by HALL:

Q. 57. Did you see the birth?

A. Yes, sir; his birth and marriage and everything was there, and the date when he died; I cannot say just the day when he died; I can give you my impression; I think he was about 25 or '6 when he died from that record.

Witness excused.

Deeds Offered.

AMES: I will offer this lot of deeds in evidence.

BURR: We object to the introduction of the several deeds now offered as incompetent, immaterial, and irrelevant, and as not the best evidence.

Copies of the papers thus offered are placed in this report immediately following this folio, the same being "Exhibit U" and being on folios 135 to——

The further taking of testimony in this cause was here adjourned until Saturday, the 28th of October, 1882, at the office of Messrs. Harwood & Ames, attorneys-at-law, Lincoln, Nebraska.

370 *Warranty Deed. Editha J. Dawson to Paren England. Filed for Record March 26th, 1870, 12 m.*

Know all men by these presents that I, Editha J. Dawson, of the county of Lancaster, State of Nebraska, in consideration of the sum of fourteen hundred and eighty dollars in hand paid by Paren England, of the county of Lancaster, State of Nebraska, hereby sell and convey unto the said Paren England the following-described real estate, to wit: Block No. 41 (forty-one) in Dawson's addition to South Lincoln, in the county of Lancaster, State of Nebraska; to have and to hold said premises unto the said Paren England, his heirs and assigns, forever, in fee-simple, and I do hereby covenant with the said Paren England, his heir and assigns, that I am

lawfully seized of said premises; that they are free from incumbrance; that I have good right and lawful authority to sell and convey the same, and that I will forever warrant and defend the same against the lawful claims of all persons whomsoever.

Signed this 15th day of March, A. D. 1870.

EDITHA J. DAWSON, [SEAL.]
By JOHN H. DAWSON, [SEAL.]
Her Attorney-in-Fact.

Witness:

_____,
U. S. Marshal.

[$1.50 U. S. Int. Rev.]

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 17th day of March, A. D. 1870, before me, the subscriber, a justice of the peace, duly elected and qualified for and residing in said county, personally came John H. Dawson, to me known to be the identical person whose — is affixed to the foregoing conveyance as attorney-in-fact for the grantor, and he acknowledged the same to be the voluntary act and deed of the said Editha J. Dawson.

371 In witness whereof I have hereunto subscribed my name at Lincoln, Nebraska, on date last above written.

GEORGE C. McKAY, *J. P.*

Warranty Deed. Editha J. Dawson to Aldus Cody. Filed for Record May 13, 1870, 11.30 *a. m.*

Know all men by these presents that I, Editha J. Dawson, by my attorney-in-fact, John H. Dawson, of Lancaster, State of Nebraska, in consideration of the sum of eleven hundred and thirty-four dollars in hand paid by Aldus Cody, of the county of Lancaster, State of Nebraska, do hereby sell and convey unto the said Aldus Cody the following-described real estate, to wit: Block thirty-three (33) in Dawson's addition to South Lincoln, in the county of Lancaster and State of Nebraska.

To have and to hold said premises unto the said Aldus Cody, his heirs and assigns, forever in fee-simple, and I do hereby covenant with the said Aldus Cody, his heirs and assigns, that I am lawfully seized of said premises; that they are free from incumbrances; that I have good right and lawful authority to sell and convey the same, and that I will forever warrant and defend the same against the lawful claims of all persons whomsoever.

Signed this 29th day of April, A. D. 1870.

EDITHA J. DAWSON,
By JOHN H. DAWSON,
Her Attorney-in-Fact.

Witness:
GEORGE McKAY.

[$1.50 U. S. Rev.]

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 29th day of April, A. D. 1870, before me, the subscriber, a justice of the peace duly elected and qualified for and re-
372 siding in said county, personally came John H. Dawson, personally to me known to be the identical person whose name is affixed to the foregoing conveyance as attorney-in-fact for the grantor, and he acknowledged the same to be the voluntary act and deed of the said Editha J. Dawson and the voluntary act and deed of the said John H. Dawson.

In witness whereof I have hereunto subscribed my name, at Lincoln, Nebraska, on the date last above written.

GEORGE C. McKAY,
Justice of the Peace.

Warranty Deed. Editha J. Dawson to L. W. Billingsley. Filed for Record April 5th, 1871, 3.10 *p. m.*

This indenture made this first day of February, in the year of our Lord one thousand eight hundred and seventy, between Editha J. Dawson, of the county of Lancaster and State of Nebraska, of the first part, and L. W. Billingsley, of the same place, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of two hundred and sixty-five dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents do grant, bargain, and sell and convey unto the said party of the second part, his heirs and assigns, all the following-described lots, pieces, or parcel of land situated in the county of Lancaster and State of Nebraska, to wit: Lots No-. 4, 5, and 6 (four, five, and six), in block No. thirty-eight (38), in Dawson's addition to South Lincoln, together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and re-
373 mainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or in equity, in and to the above-bargained premises and the hereditaments and appurtenances.

To have and to hold the *above* premises above bargained and described, with the appurtenances, to the only proper use and benefit of the said party of the second part, his heirs and assigns, forever, and the said Editha J. Dawson, party of the first part, hereby expressly waivos, releases, and relinquishes unto the said party of the second part, his heirs, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to exemption of homesteads.

And the said Editha J. Dawson, party of the first part, for herself, her heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his

heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above conveyed as of good, sure, perfect, absolute, and indefeasible estate of inheritance in law and in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim
374 the whole or any part thereof the said party of the first part shall and will warrant and defend forever.

In testimony whereof the said party of the first part has hereunto set her hand and seal the day and year first above written by J. H. Dawson, her attorney-in-fact.

EDITHA J. DAWSON, [SEAL.]
By JOHN H. DAWSON, [SEAL.]
Her Attorneys-in-Fact.

Signed, sealed, and delivered in presence of—
S. B. GALEY.

[50c. U. S. Int. Rev.]

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 28th day of February, A. D. 1870, before me, the subscriber, a justice of the peace, duly elected and qualified for and residing in said county, personally appeared John H. Dawson, to me known to be the identical person described in and whose name is affixed to the foregoing conveyance as attorney-in-fact for the grantor, and he acknowledged the same to be his voluntary act and deed and deed of the said Editha J. Dawson.

In testimony whereof I have hereunto set my hand and seal, at Lincoln, in said county, the day and year last above written.

GEORGE C. McKAY,
Justice of the Peace.

Warranty Deed. Editha J. Dawson to L. Cody. Filed for Record April 10, 1871, 4.15 *P. M.*

Know all men by these presents that I, Editha J. Dawson, by John H. Dawson, my attorney-in-fact, both of the county of Lancaster, State of Nebraska, in consideration of the sum of eleven hundred and thirty-four dollars in hand paid by L. Cody, of the county of Lancaster and State of Nebraska, do hereby sell and convey unto the said L. Cody the following-described real estate, to wit:

Block number thirty-two, in Dawson's addition to South Lin-
375 coln, in the county of Lancaster and State of Nebraska; to have and to hold said premises under the said L. Cody, his heirs and assigns, forever, in fee-simple. And I do hereby covenant with the said L. Cody, his heirs and assigns, that I am lawfully

seized of said premises; that they are free from incumbrance, and that I have good right and lawful authority to sell and convey the same, and that I will forever warrant and defend the same against the lawful claims of all persons whomsoever.

Signed this 29th day of April, A. D. 1870.

EDITHA J. DAWSON, [SEAL.]
By JOHN H. DAWSON, [SEAL.]
Her Attorney-in-Fact.

Witness:
GEORGE C. McKAY,
U. S. Marshal.

[$1.50 U. S. Int. Rev.]

THE STATE OF NEBRASKA, }
Lancaster County, } *ss:*

On this 20th day of April, A. D. 1870, before me, the subscriber, a justice of the peace duly elected and qualified for and residing in said county, personally came John H. Dawson, personally to me known to be the identical person whose name is affixed to the foregoing conveyances as attorney-in-fact for the grantor, and he acknowledged the same to be the voluntary act and deed of the said Editha J. Dawson.

In witness whereof I have hereunto subscribed my name, at Lincoln, Nebraska, on the date last above written.

GEORGE C. McKAY,
Justice of the Peace.

Warranty Deed. Editha J. Dawson to Samuel M. Clay. Filed for Record April 13, 1871, 11.15 *a. m.*

Know all men by these presents that I, Editha J. Dawson, by John H. Dawson, my attorney-in-fact, both of the county of Lancaster, State of Nebraska, in consideration of the sum of
376 thirteen hundred and seventy-six dollars in hand paid by Samuel McClay, of the county of Lancaster, State of Nebraska, do hereby sell and convey unto the said Samuel McClay the following-described real estate, to wit: Block number 39 (thirty-nine), in Dawson's addition to South Lincoln, in the county of Lancaster and State of Nebraska.

To have and to hold said premises unto the said Samuel McClay, his heirs and assigns, forever, in fee-simple; and I do hereby covenant with the said Samuel McClay, his heirs and assigns, that I am lawfully seized of said premises; that they are free from incumbrances; that I have good right and lawful authority to sell and convey the same, and that I will forever warrant and defend the same against the lawful claims of all persons whomsoever.

Signed this 15th daw of February, A. D. 1880.

EDITHA JANE DAWSON, [SEAL.]
By JOHN H. DAWSON, [SEAL.]
Her Attorney-in-Fact.

Witness:
_____ _____,
U. S. Marshal.

[$1.50 U. S. Int. Rev.]

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 27th day of June, A. D. 1870, before me, the subscriber, a justice of the peace duly qualified and elected for and residing in said county, personally came John H. Dawson, personally to me known to be the identical person whose name is affixed to the foregoing conveyance as attorney-in-fact for the grantor, and he acknowledged the same to be the voluntary act and deed of the said Editha J. Dawson and the voluntary act and deed of John H. Dawson, such attorney.

In witness whereof I have hereunto subscribed my name and affixed my official seal, at Lincoln, Nebraska, on the date last above written.

GEORGE C. McKAY,
Justice of the Peace.

377 *Warranty Deed. Editha J. Dawson to Guy C. Barnum. Filed for Record July* 10, 1872, 2.30 *p. m.*

This indenture, made this 14th day of January, in the year of our Lord one thousand eight hundred and seventy-two, between Editha J. Dawson, of Lancaster county, Nebraska, of the first part, and Guy C. Barnum, of Platte county, State of Nebraska, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of three hundred dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, all the following-described pieces and parcels of land, situate in the county of Lancaster and State of Nebraska, to wit: Lots numbers three (3) and four (4), in block number forty-seven (47), in Dawson's addition to South Lincoln, according to the recorded plat of said addition, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or in equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, to the only proper use and benefit of the said party of the second part, his heirs and assigns, forever; and the said
378 Editha J. Dawson, party of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, his heirs, executors, and administrators and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads

And the said Editha J. Dawson, party of the first part, for herself,

her heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law and in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind soever or nature whatever except the taxes for the year 1871; and the above-bargained premises to the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall warrant and will warrant and forever defend.

In testimony whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

EDITHA J. DAWSON, [SEAL.]
By J. H. DAWSON, [SEAL.]
Her Attorney-in-Fact.

Signed, sealed, and delivered in the presence of—
S. B. GALEY.

[50c. U. S. R. S.]

379 STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 14th day of January, A. D. 1872, before me, the subscriber, a notary public duly appointed and qualified for and residing in said county, personally appeared J. H. Dawson, att'y for Editha J. Dawson, to me known to be the identical person described in and whose name is affixed to the foregoing conveyance as grantor, and the said J. H. Dawson acknowledged the same to be his voluntary act and deed as said attorney-in-fact.

In witness whereof I have hereunto set my hand and notarial seal, at Lincoln, Nebr., in said county, the day and year last above written.

C. H. STREET, [SEAL.]
Notary Public.

Warranty Deed. Editha J. Dawson to Rodney K. Johnson. Filed for Record January 15, 1872, 2.30 *p. m.*

Know all men by these presents that I, Editha J. Dawson, by my attorney, John H. Dawson, both of the county of Lancaster and State of Nebraska, in consideration of the sum of three hundred and twenty-four dollars in hand paid by Rodney K. Johnson, of the county of Lancaster and State of Nebraska, do hereby sell and convey unto the said Rodney K. Johnson the following-described real estate, to wit: Lots numbers seven, eight, and nine (7, 8, and 9), in block num-

ber thirty-one (31), in Dawson's addition to South Lincoln, in the county of Lancaster and State of Nebraska; to have and to hold the said premises unto the said Rodney K. Johnson, his heirs and assigns, forever in fee-simple. And I do hereby covenant with the said Rodney K. Johnson, his heirs and assigns, that I am law-
380 fully seized of said premises; that they are free from incumbrance; that I have good right and lawful authority to sell and convey the same, and that I will forever warrant and defend the same against the lawful claims of all persons whomsoever.

Signed this sixth day of July, A. D. 1870.

EDITHA J. DAWSON, [SEAL.]
By JOHN H. DAWSON,
Her Attorney-in-Fact.

Witness:
GEORGE C. McKAY.

[50 U. S. R. S.]

THE STATE OF NEBRASKA, }
Lancaster County, } *ss:*

On this 6th day of July, A. D. 1872, before me, the subscriber, a justice of the peace duly elected and qualified for and residing in said county, personally came John H. Dawson, attorney-in-fact, personally to me known to be the identical person whose name is affixed to the foregoing conveyance as attorney-in-fact for the grantor, and he acknowledged the same to be the voluntary act and deed of said Editha J. Dawson and of the said J. H. Dawson as such attorney.

In witness whereof I have hereunto subscribed my name and affixed my official seal, at Lincoln, in said county, on the date last above written.

GEORGE C. McKAY,
Justice of the Peace.

Warranty Deed. Editha J. Dawson to Miss Kittie A. Eckman. Filed for Record February 5, 1873, 10.30 *a. m.*

This indenture, made this first day of February, in the year of our Lord one thousand eight hundred and seventy, between Editha J. Dawson, of the county of Lancaster and State of Nebraska, of the first part, and Miss Kittie A. Ackman, of the second part, witnesseth: That the said party of the first part,
381 for and in consideration of the sum of two hundred and sixty dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, all the following-described lots, pieces, or parcels of land situated in the county of Lancaster and State of Nebraska, to wit: Lots Nos. 1, 2, 3 (one, two, three), in block No. 38 (thirty-eight), in Dawson's addition to South Lincoln, together with all and singular the hereditaments and appurtenance thereunto belonging

or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents and issues and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or in equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, to the only proper use and benefit of the said party of the second part, her heirs and assigns forever; and the said Editha J. Dawson, party of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, her heirs and executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Editha J. Dawson, party of the first part, for herself, her heirs, executors, and administrators, doth covenant, grant,

382 bargain, and agree to and with the said party of the second part, her heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law and in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, her heirs and assigns, against all and every person and persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

In testimony whereof the said party of the first part has hereunto set her hand and seal the day and year first above written, by J. H. Dawson, her attorney-in-fact.

EDITHA J. DAWSON. [SEAL.]
JOHN H. DAWSON, [SEAL.]
Her Attorney-in-Fact.

Signed, sealed, and delivered in presence of—

——— ———.

[50c. U. S. R. S.]

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 28th day of February, A. D. 1870, before me, the subscriber, a justice of the peace duly elected and qualified for and residing in said county, personally appeared John H. Dawson, to me known to be the identical person described in and whose name is affixed to the foregoing conveyance as attorney-in-fact for the grantor, and he acknowledged the same to be the voluntary act and deed of the said Editha J. Dawson.

In testimony whereof I have hereunto set my hand and
383 seal, at Lincoln, in said county, the day and year last above written.

GEORGE C. McKAY,
Justice of the Peace.

Warrranty Deed. Editha J. Dawson to Charlotte Heater. Filed for Record Feb. 17, 1875, 1.15 *p. m. Wm. A. Sharrar, County Cl'k. J. P. Hebbard, Dep.*

This indenture, made this eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-two, between Editha J. Dawson, of the county of Lancaster, State of Nebraska, of the first part, and Charlotte Heater, of the city of Lincoln, county of Lancaster, and State of Nebraska, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of two hundred (200) dollars in hand paid by the said party of the second part, [the] receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey, unto the said party of the second part, her heirs and assigns, all the following-described lots, pieces, or parcels of land in the county of Lancaster and State of Nebraska, to wit: Lot number four (4), in block number thirty-one (31), in Dawson's addition to South Lincoln, according to the survey and recorded plat of said addition, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or in equity, of, in, and to the above-bargained premises, the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, to the only proper use and benefit of the said party of the second part her heirs, and assigns, forever, and
384 the said Editha J. Dawson, party of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, her heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Editha J. Dawson, party of the first part, for herself and her heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, her heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of these presents above conveyed as of a sure, perfect, absolute, and indefeasible estate of inheritance in law and of fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assess-

or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents and issues and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or in equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, to the only proper use and benefit of the said party of the second part, her heirs and assigns forever; and the said Editha J. Dawson, party of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, her heirs and executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Editha J. Dawson, party of the first part, for herself, her heirs, executors, and administrators, doth covenant, grant,
382 bargain, and agree to and with the said party of the second part, her heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law and in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, her heirs and assigns, against all and every person and persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

In testimony whereof the said party of the first part has hereunto set her hand and seal the day and year first above written, by J. H. Dawson, her attorney-in-fact.

EDITHA J. DAWSON. [SEAL.]
JOHN H. DAWSON, [SEAL.]
Her Attorney-in-Fact.

Signed, sealed, and delivered in presence of—

——— ———.

[50c. U. S. R. S.]

STATE OF NEBRASKA, }
Lancaster County, } *ss:*

On this 28th day of February, A. D. 1870, before me, the subscriber, a justice of the peace duly elected and qualified for and residing in said county, personally appeared John H. Dawson, to me known to be the identical person described in and whose name is affixed to the foregoing conveyance as attorney-in-fact for the grantor, and he acknowledged the same to be the voluntary act and deed of the said Editha J. Dawson.

In testimony whereof I have hereunto set my hand and
383 seal, at Lincoln, in said county, the day and year last above written.

GEORGE C. McKAY,
Justice of the Peace.

Warrranty Deed. Editha J. Dawson to Charlotte Heater. Filed for Record Feb. 17, 1875, 1.15 *p. m. Wm. A. Sharrar, County Cl'k. J. P. Hebbard, Dep.*

This indenture, made this eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-two, between Editha J. Dawson, of the county of Lancaster, State of Nebraska, of the first part, and Charlotte Heater, of the city of Lincoln, county of Lancaster, and State of Nebraska, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of two hundred (200) dollars in hand paid by the said party of the second part, [the] receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey, unto the said party of the second part, her heirs and assigns, all the following-described lots, pieces, or parcels of land in the county of Lancaster and State of Nebraska, to wit: Lot number four (4), in block number thirty-one (31), in Dawson's addition to South Lincoln, according to the survey and recorded plat of said addition, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or in equity, of, in, and to the above-bargained premises, the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, to the only proper use and benefit of the said party of the second part her heirs, and assigns, forever, and
384 the said Editha J. Dawson, party of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, her heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Editha J. Dawson, party of the first part, for herself and her heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, her heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of these presents above conveyed as of a sure, perfect, absolute, and indefeasible estate of inheritance in law and of fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assess-

ments, and incumbrances of what kind or nature soever, except the taxes for the year 1872; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, her heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

In testimony whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

385 EDITHA J. DAWSON, [SEAL.]
By J. H. DAWSON, [SEAL.]
Her Attorney-in-Fact.

Signed, sealed, and delivered in the presence of—
S. B. GALEY.

[50c. U. S. R. S.]

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 18th day of July, A. D. 1872, before me, the subscriber, a notary public duly appointed and qualified for and residing in said county, personally appeared J. H. Dawson, attorney-in-fact for Editha J. Dawson, to me known to be the identical person described in and whose name is affixed to the foregoing conveyance as grantor; and he acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the said Editha J. Dawson.

In testimony whereof I have hereunto set my hand and notarial seal at Lincoln, in said county, the day and year last above written.

[SEAL.] C. H. STREET,
Notary Public.

Warranty Deed. Editha J. Dawson to Alexander and Charles D. C. Huestis. Filed for Record, Feb. 19, 1875, 12 *m. Wm. H. Sharar, County Clerk. J. P. Hebbard, Deputy.*

This indenture, made this eighteenth day of February, in the year of our Lord one thousand eight hundred and seventy-five, between Editha J. Dawson, of Lincoln, Lancaster county, Nebraska, of the first part, and Alexander C. Huestis and Charles D. C. Huestis, of Fort Wayne, Allen county, Indiana, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of six hundred and fifty dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these pres-
386 ents do grant, bargain, sell, and convey, unto the said parties of the second part, their heirs and assigns, all the following-described lots, pieces, or parcels of land, situated in Lincoln, in the county of Lancaster and State of Nebraska, to wit: All the following-described real estate in the city of Lincoln, county of Lancaster, and State of Nebraska, to wit: Lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), in block number thirty-seven (37), in Dawson's addition

to Lincoln, as is shown by the recorded plat now on record in the county clerk's office of said county of Lancaster, said State of Nebraska; also lots five (5), six (6), seven (7), eight (8), in block number thirty-six (36); also lots one (1), two (2), three (3), four (4), in block number thirty-five (35), in Dawson's addition to the city of Lincoln, as is shown by the recorded plat now on record in the county clerk's office of said county of Lancaster, said State of Nebraska, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either at law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, to the only proper use and benefit of the said party of the second part, their heirs and assigns, forever; and the said Editha J. Dawson, party of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, their heirs and executors, administrators, and assigns, all right, title, claim, interest,
387 and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Editha J. Dawson, party of the first part, for her heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said parties of the second part, *her* heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above conveyed as of a good, perfect, absolute, and indefeasible estate of inheritance in law and in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever, and the above-bargained premises in the quiet and peaceable possession of the said parties of the *said party of the* second part, their heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will forever warrant and defend.

In testimony whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

EDITHA J. DAWSON. [SEAL.]

Signed, sealed, and delivered in presence of—
LIONEL C. BURR.

STATE OF NEBRASKA, } *ss:*
Lancaster County, }

On this 18th day of February, A. D. 1875, before me, the subscriber, a notary public commissioned and qualified for and residing in

said county, personally appeared Editha J. Dawson, to me
388 known to be the identical person described in and whose name is affixed to the foregoing conveyance as grantor, and she acknowledged the same to be her voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal, at my office, in said county, the day and year last above written.

[SEAL.] LIONEL C. BURR,
Notary Public.

Warranty Deed. Editha J. Dawson to E. H. Tuttle. Filed for Record June 12th, 1875, at 3.30 p. m. Wm. A. Sharrar, County Clerk, J. P. Hebberd, Deputy.

This indenture, made this twelfth day of June, in the year of our Lord one thousand eight hundred and seventy-five, between Editha J. Dawson, of Lancaster county, Nebraska, of the first part, and E. H. Tuttle, of same place, of second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of three hundred dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, all the following-described lots, pieces, or parcels of land, situated in South Lincoln, in the county of Lancaster, State of Nebraska, to wit:

Lots numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), in block numbered forty-six (46), in Dawson's addition to South Lincoln, in said county and State, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and re-
389 mainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, to the only proper use and benefit of the said party of the second part, his heirs and assigns, forever; and the said Editha J. Dawson, party of the first part, hereby expressly waives and relinquishes unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Editha J. Dawson, party of the first part, for her heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises as above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law and in fee-simple, and has good right, full power, and lawful

authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person and persons lawfully claiming or to claim the whole or any
390 part thereof the said party of the first part shall and will warrant and forever defend.

In testimony whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

EDITHA J. DAWSON. [SEAL.]

Signed, sealed, and delivered in presence of—
LIONEL C. BURR.

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 12th day of June, A. D. 1875, before me, the subscriber, a notary public duly commissioned and qualified for and residing in said county, personally appeared Editha J. Dawson, to me known to be the identical person described in and whose name is affixed to the foregoing conveyance as grantor, and she acknowledged the same to be her voluntary act and deed.

In testimony whereof I have hereunto set my hand and seal, at my office in said county, the day and year last above written.

[SEAL.] LIONEL C. BURR,
Notary Public.

Warranty Deed. Editha J. Dawson to William A. Sharrar et al. Filed for Record June 18th, 1875, at 3.15 p. m. Wm. A. Sharrar, County Clerk. J. P. Hebberd, Deputy.

This indenture, made this fourteenth day of June, in the year of our Lord one thousand eight hundred and seventy-five, between Editha J. Dawson, of Lancaster county, Nebraska, of the first part, and William A. Sharrar, Amanzel D. Burr, and Carlos C. Burr, all of same place, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand and fourteen dollars in hand paid by the said parties of the
391 second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said parties of the second part, their heirs and assigns, all the following-described lots, pieces, or parcels of land situated in the county of Lancaster and State of Nebraska: An undivided one-third interest to William A. Sharrar; an undivided one-third interest to Amanzel D. Burr; an undivided one-third interest to Carlos C. Burr, to wit: Lot eight (8), in block one (1), and lots seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block five (5), and lots nine (9), ten (10), in block six (6), all in Capital addition to the city of Lincoln, Lancaster

county, Nebraska; also lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block forty-four (44), and lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), eleven (11), and twelve (12), in block forty-eight (48), and lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), and eight (8), in block forty-nine (49), and lots one (1), two (2), three (3), and four (4), in block twenty-two (22), in Dawson's addition to South Lincoln, in the county of Lancaster and State of Nebraska; together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first party, either in law or in equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, to the only proper
392 use and benefit of the said parties of the second part, their heirs and assigns, forever; and the said Editha J. Dawson, party of the first part, hereby expressly waives, releases, and relinquishes unto the said parties of the second part, their heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Editha J. Dawson, party of the first part, for herself and her heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said parties of the second part, their heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law and in fee-simple, and has good right and full power and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens now levied, and incumbrances of what kind or nature soever except taxes for the year 1875, and the above-bargained premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against all and every person and persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

In testimony whereof the said party of the first part has hereunto set her hand and seal the day and year last above written.

393 EDITHA J. DAWSON. [SEAL.]

Signed, sealed, and delivered in presence of—
LIONEL C. BURR.

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 14th day of June, A. D. 1875, before me, the subscriber, a

notary public duly commissioned and qualified for and residing in said county, personally appeared Editha J. Dawson, to me known to be the identical person described in and whose name is affixed to the foregoing conveyance as grantor, and she acknowledged the same to be her voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal, at my office in said county, the day and year last above written.

[SEAL.] LIONEL C. BURR,
Notary Public.

Warranty Deed. Editha J. Dawson to Mary Ann McLaughlin. Filed for Record July 3rd, 1875, *at* 2.10. *Wm. A. Sharrar, County Clerk. J. P. Hebbard, Deputy.*

Know all men by these presents that Editha J. Dawson, of Lancaster county, Nebraska, in consideration of two hundred dollars in hand paid, *do* hereby grant, bargain, and sell, convey, and confirm unto Mary Ann McLaughlin the following-described real estate situated in the county of Lancaster and State of Nebraska, to wit: Lots one (1), two (2), three (3), ten (10), eleven (11), and twelve (12), in block thirty-one (31), in Dawson's addition to South Lincoln, said county and State, together with all the tenements, hereditaments, and appurtenances to the same belonging, and all the estate, right, title, interest, dower, claim, or demand whatsoever of the said Editha J. Dawson of, in, or to the same, or any part thereof; to have
394 and to hold the above-described premises, with the appurtenances, to the said Mary Ann McLaughlin, and to her heirs and assigns, forever.

And I do hereby covenant with the said Mary Ann McLaughlin, and her heirs, assigns, and legal representatives, that I am lawfully seized of said premises; that they are free of all liens and incumbrances — taxes; that I have good right and lawful authority to sell the same; that said grantee shall and may at all times hereafter peaceably and quietly have, occupy, and enjoy said premises without the lawful hindrance or molestation of any person or persons whomsoever; that the said Editha J. Dawson, for herself and her heirs and legal representatives, shall at all times hereafter, at the reasonable request of the said grantee, her heirs and assigns, make and execute all and every such further and other lawful — reasonable deed or deeds whatsoever for the more perfect and absolute assurance and confirmation of the said premises hereby granted unto the said grantee, her heirs and assigns, as by her or them shall be reasonably required; and I do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever; and it is hereby further covenanted and agreed that all of the covenants and rights of action on any covenant herein shall run with said premises as fully as the covenant of warranty; and also that it shall not be necessary for said grantee, her heirs and assigns, that it shall not be necessary for said grantee, her heirs and assigns,

to be ousted or ejected by superior title before they or any of them can maintain an action on any of the covenants herein.

Signed this twenty-second day of June, 1875.

EDITHA J. DAWSON.

In presence of—
LIONEL C. BURR.

395 STATE OF NEBRASKA, } ss:
Lancaster County, }

On this twenty-second day of June, 1875, before me, Lionel C. Burr, a notary public duly commissioned and qualified for and residing in said county, personally came the above-named Editha J. Dawson, who is personally known to me to be the identical person described in and whose name is affixed to the foregoing deed as grantor, and she acknowledged the instrument to be her voluntary act and deed for the purposes therein stated.

Witness my hand and notarial seal the date aforesaid, at my office, in said county.

[SEAL.] LIONEL C. BURR,
Notary Public.

Warranty Deed. Editha J. Dawson to Charles C. Snowden. Filed for Record July 3rd, 3.35 p. m. Wm. A. Sharar, County Clerk. J. P. Hebard, Deputy.

Know all men by these presents that Editha J. Dawson, of Lancaster county, Nebraska, in consideration of three hundred dollars in hand paid, *do* hereby grant, bargain, sell, convey, and confirm unto Charles C. Snowden, of the same place, the following-described real estate situated in the county of Lancaster, State of Nebraska, to wit: Lots two (2) and eleven (11), in block twenty-three (23), and lots five (5) and six (6), in block thirty (30), and lots seven (7), eight (8), nine (9), and ten (10), in block forty-seven (47), and lots one (1), two (2), three (3), nine (9), ten (10), eleven (11), twelve (12), in block forty-two (42), all in Dawson's addition to South Lincoln, together with all the tenements, hereditaments, and appurtenances to the same belonging, and all the estate, right, title, interest,
396 dower, claim, or demand whatsoever of the said Editha J. Dawson of, in, or to the same or any part thereof; to have and to hold the above-described premises, with the appurtenances, unto the said Charles C. Snowden, and to his heirs and assigns, forever.

And I do hereby covenant with the said Charles C. Snowden, and his heirs, assigns, and legal representatives, that I am lawfully seized of said premises; that they are free of all liens and incumbrances, taxes, and assessments for taxes, except taxes for 1875; that I have good right and lawful authority to sell the same; that said grantee shall and may at all times hereafter peaceably and quietly have and occupy and enjoy said premises without the lawful hindrance or molestation of any person or persons whomsoever; that the said Edith J. Dawson, for herself and her heirs and legal

representatives, shall at all times hereafter, at the reasonable request of said grantee, his heirs and assigns, make and execute, all and every such further and other lawful, reasonable deed or deeds whatsoever for the more perfect and absolute assurance and confirmation of the said premises hereby granted unto the said grantee, his heirs and assigns, as by him or them shall be reasonably required; and I do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

And it is hereby covenanted and agreed that all of the covenants and rights of action on any covenants herein shall run with said premises as fully as the covenants of warranty, and also that it shall not be necessary for said grantee, his heirs and assigns, to be ousted or ejected by superior title before they or any of them can maintain an action on any of the covenants herein.

Signed this twenty-eighth day of June, 1875.

EDITHA J. DAWSON.

In presence of—
LIONEL C. BURR.

397 On this 28th day of June, 1875, before me, Lionel C. Burr, a notary public duly commissioned and qualified for and residing in said county, personally came the above-named Editha J. Dawson, who is personally known to me to be the identical person described in and whose name is affixed to the foregoing deed as grantor, and she acknowledged the instrument to be her voluntary act and deed for the purpose therein stated.

Witness my hand and notarial seal the date aforesaid, at my office in said county.

[SEAL.] LIONEL C. BURR,
Notary Public.

Warranty Deed. Editha J. Dawson to Martha Ellen Snowden. Filed for Record July 3rd, 1875, at 3.35 p. m. Wm. A. Sharrar, Co. Clerk. J. P. Hebard, Deputy.

Know all men by these presents that Editha J. Dawson, of Lancaster county, Nebraska, in consideration of two hundred dollars in hand paid, do hereby grant, bargain, sell, and convey and confirm unto Martha Ellen Snowden the following-described real estate situate in the county of Lancaster and State of Nebraska, to wit: Lots one (1), two (2), three (3), four (4), five (5), and six (6), in block forty (40), in Dawson's addition to South Lincoln, in said county and State; together with all the tenements, hereditaments, and appurtenances to the same belonging, and all the estate, right, title, interest, dower, claim, or demand whatsoever of the said Editha J. Dawson of, in, or to the same or any part thereof; to have and to hold the above-described premises, with the appurtenances unto the said Martha Ellen Snowden and to her heirs and assigns forever; and I do hereby covenant with the said Martha

Ellen Snowden and her heirs and assigns and legal rep-
398 representatives, that they are free of all liens and incumbrances, taxes, and assessments for taxes, except taxes for 1875; that I have good right and lawful authority to sell the same; that said grantee shall and may at all times hereafter peaceably and quietly have, occupy, and enjoy said premises without the lawful hindrance or molestation of any person or persons whomsoever; that the said Editha J. Dawson, for herself and her heirs and legal representatives, shall at all times hereafter, at the reasonable request of said grantee, her heirs and assigns, make and execute all and every such further and other lawful, reasonable deed or deeds whatsoever for the more perfect and absolute assurance and confirmation of the said premises hereby granted unto the said grantee, her heirs and assigns, as by her or them shall be reasonably required; and I do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever. And it is hereby further covenanted and agreed that all of the covenants and rights of action on any covenant herein shall run with said premises as fully as the covenant of warranty; and also that it shall not be necessary for said grantee, her heirs and assigns, to be ousted or ejected by superior title before they or any of them can maintain an action on any of the covenants herein.

Signed this twenty-eighth day of June, 1875.

EDITHA J. DAWSON.

In presence of—
LIONEL C. BURR.

STATE OF NEBRASKA, }
Lancaster County, } *ss:*

On this 28th day of June, 1875, before me, L. C. Burr, a notary public duly commissioned [and] qualified for and residing in said county, personally came the above-named Editha J. Dawson, who is personally known to me to be the identical person described in
399 and whose name is affixed to the foregoing deed as grantor, and she acknowledged the instrument to be her voluntary act and deed for the purposes therein stated.

Witness my hand and notarial seal the date aforesaid at my office in said county the day and year last above written.

[SEAL.] LIONEL C. BURR,
Notary Public.

Warranty Deed. Editha J. Dawson to William T. Van Dorn and George W. Lashus. Filed for Record Jan'y 11th, at 12 m. —— ——, *Co. Clk.* —— ——, *Deputy.*

This indenture, made this twenty-fifth day of December, in the year of our Lord one thousand eight hundred and seventy-six, between Editha J. Dawson, of Lancaster county, Nebraska, of the first part, and William T. Van Dorn and George W. Lashus, of Ogden, Utah, of the second part, witnesseth: That the said party of the first part,

for and in consideration of the sum of sixteen hundred dollars to her duly paid, the receipt whereof is hereby acknowledged, has sold, and by these presents does grant, convey, and confirm, unto the said parties of the second part, their heirs and assigns, all the following-described real estate, being and situated in the county of Lancaster and State of Nebraska, to wit: The southeast 4th of the southeast 4th quarter section thirty-five (35), town. ten (10), range six (6) east, containing forty acres, together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and also all the estate, right, title, and interest, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same, with the appurtenances; and the said Editha J. Dawson, for her heirs, executors, and administrators, does hereby covenant and agree to and with the said
400 parties of the second part, their heirs and assigns, that the said Editha J. Dawson, at the time of the ensealing and delivery of these presents, is lawfully seized in her own right of a good, absolute, and indefeasible estate of inheritance in fee-simple of and in all and singular the above-granted premises, with the appurtenances, and has good right, full power, and lawful authority to grant and convey the same in the manner aforesaid, and that the same are now clear and free of and from all former grants, charges, assessments, taxes, and incumbrances of whatsoever nature, except taxes that may now be a lien upon said land for the year 1876, amounting to fifteen dollars and seventy-four cents ($15.74); and the said Editha J. Dawson and her heirs the above-granted premises, with the appurtenances, against all persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

EDITHA J. DAWSON.

Signed, sealed, and delivered in presence of—
L. C. BURR.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 25th day of December, A. D. 1876, before me, the subscriber, a notary public duly appointed, commissioned, and qualified for and residing in said county, personally appeared Editha J. Dawson, to me known to be the identical person described in and who executed the foregoing conveyance as grantor, and she acknowledged the same to be her voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal, at my office in said county, the day and year last above written.

[SEAL.]

L. C. BURR,
Notary Public.

401 *Warranty Deed. Editha J. Dawson to B. L. Harding. Filed for Record M'ch 5th, 1877, at 8 a. m.* —— ——, *Co. Clk.* —— ——, *Dep.*

Know all men by these presents that I, Editha J. Dawson, a widow, of Lancaster county and State of Nebraska, in consideration of the sum of thirty-five hundred dollars in hand paid by B. L. Harding, of Union county and State of Iowa, do hereby sell and convey unto the said B. L. Harding the following-described premises situated in the county of Lancaster, and State of Nebraska, to wit: The west half of the southeast quarter of section No. nineteen (19), in township No. ten (10) north, range No. seven east, of the 6th P. M., containing eighty (80) acres, more or less, according to Government survey. And I hereby covenant with the said B. L. Harding that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatever, except a mortgage to the Union Mutual Life Ins. Co., Maine, and tax of '76, and I covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever, except above mortgage.

Signed the first day of March, A. D. 1877.

EDITHA J. DAWSON.

In presence of—
L. C. BURR.

STATE OF NEBRASKA, } ss:
Lancaster County, }

On the second day of March, A. D. 1877, before me, L. C. Burr, a notary public within and for said county, personally came Editha J. Dawson, personally to me known to be the identical person whose name is affixed to the above instrument as grantor, and severally acknowledged the execution of the same to be her voluntary act and deed for the purposes therein expressed.

402 In witness whereof I have hereunto subscribed my name and affixed my official seal, at my office in said county, on the date last above written.

[SEAL.]

L. C. BURR,
Notary Public.

Warranty Deed. Editha J. Dawson to Jacob Friedman. Filed for Record June 24th, 1878, 9.50 a. m. —— ——, *Co. Clerk.*

Know all men by these presents that I, Editha J. Dawson, of the city of Lincoln, in the county of Lancaster and State of Nebraska, for and in consideration of the sum of sixty-five dollars in hand paid, *do* hereby grant, bargain, sell, convey, and confirm unto Jacob Friedman, of Chicago, in the county of Cook and State of Illinois, the following-described real estate situated in Dawson's addition to South Lincoln, in Lancaster county and State of Nebraska, to wit:

Lots numbered seven (7) and eight (8), in block numbered twenty-

nine (29), and lots numbered eleven (11) and twelve (12), in block numbered forty-seven (47), all of the above-described lots being in Dawson's addition to South Lincoln, Lancaster county, State of Nebraska, as shown by the recorded plat of the same.

And I do hereby covenant with the said Jacob Friedman and his heirs and assigns that I am lawfully seized of said premises; that they are free from incumbrance; that I have good right and lawful authority to sell the same; and that I do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever except the taxes for the year 1878, and the said — hereby relinquishes all — in and to the above described premises.

Signed this twenty-second day of June, A. D. 1878.

EDITHA J. DAWSON.

In presence of—
L. C. BURR.

403 THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 22nd day of June, A. D. 1872, before me, L. C. Burr, a notary public duly commissioned and qualified for and residing in said county, personally came Editha J. Dawson, to me known to be the identical person described in and who executed the foregoing conveyance as grantor, and acknowledged the said instrument to be her voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] L. C. BURR,
Notary Public.

Certificate of County Clerk of Lancaster County.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

I, J. H. McClay, county clerk and *ex-officio* recorder of deeds of said Lancaster county, do hereby certify that the foregoing deeds, to wit: Editha J. Dawson to Paren England, recorded in deed record F, page 126; Editha J. Dawson to Aldus Cody, recorded in deed record F, page 325; Editha J. Dawson to L. W. Billingsley, recorded in deed record H, page 299; Editha J. Dawson to L. Cody, recorded in deed record H, pages 318 and 319; Editha J. Dawson to Samuel McClay, recorded in deed record H, page 333; Editha J. Dawson to Guy C. Barnum, recorded in deed record K, pages 193 and 194; Editha J. Dawson to Rodney K. Johnson, recorded in deed record J, pages 181, &c.; Edith J. Dawson to Miss Kittie A. Eckman, recorded in deed record L, pages 355 and 356; Editha J. Dawson to Charlotte Heater, recorded in deed record Q, page 28; Editha J. Dawson to Alexander C. Huestis and Charles D. C. Huestis, recorded in deed record Q, page 33; Editha J. Dawson to E. H. Tuttle, recorded in deed record Q, page 502; Editha J. Dawson to William A. Sharrar,

Amanzel D. Burr, and Carlos C. Burr, recorded in deed record
404 Q, pages 510 and 511; Editha J. Dawson to Mary Ann McLaughlin, recorded in deed record Q, page 590; Editha J. Dawson to Charles C. Snowden, recorded in deed record Q, page 593, &c.; Editha J. Dawson to Martha Ellen Snowden, recorded in deed record Q, page 595; Editha J. Dawson to William T. Van Dorn and George W. Lashus, recorded in deed record U, pages 14 and 15; Editha J. Dawson to B. L. Harding, recorded in deed record U, pages 237, &c. and from Editha J. Dawson to Jacob Friedman, recorded in deed record X, page 418, are true, correct, and carefully compared copies of said deeds herein mentioned, as appears of record in the county clerk's office of said Lancaster county, in the respective records and pages above set forth to which reference is made.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at Lincoln, Nebr., this 19th day of October, A. D. 1882.

[Seal of Lancaster County.]

J. H. McCLAY, *Co. Clerk.*

The hearing of testimony in this cause was resumed on Saturday, October 28th, 1882, at the office of Messrs. Harwood & Ames, attorneys-at-law, Lincoln Nebraska, Mr. L. C. Burr representing the parties Ezekiel Giles and others, and Mr. Ames and Mr. Hall represent the parties S. W. Little and others.

Pickering. Marriage to E. J. Dawson, Letters, Conversation, &c., &c.

H. M. PICKERING sworn and examined by AMES:

Q. 1. Where do you reside?

A. In Wheeler county, Nebraska.

Q. 2. Are you acquainted with the heirs of the late Jacob Dawson, of this county, now deceased?

A. Well, sir, I had ought to be.

Q. 3. Acquainted with his widow?

A. Well, yes; I ought to be tolerably well acquainted with her, too.

405 Q. 4. How long have you known them?

A. I have known the heirs about 8 years—since I first saw them; no, not so long—5 or 6 years since I saw the heirs. I have known her since she was quite a child.

Q. 5. Have you been personally acquainted with her since her childhood?

A. No, sir; there was twenty-odd years I was not acquainted with her. I do not remember the number of years; 20 odd, however.

Q. 6. When did your last acquaintance begin?

A. The last acquaintance I had was through a letter. I got a letter from her, if my memory serves me right, seven years ago last June.

Q. 7. Got that letter in your possession?

A. I have not.

Q. 8. Have you received others?

A. Yes; a good many.
Q. 9. Have you them?
A. I have none of her letters.
Q. 10. What have you done with them?
A. She requested me to destroy them, and I have done so.
Q. 11. All of them?
A. Yes, sir; I think I have not one of her letters; if I have I do not know where it is.
Q. 12. What was the subject of the correspondence?

Burr objected, and the question was withdrawn.

Q. 13. What was the contents of that letter, as near as you can recollect?

Burr objected [as] incompetent, immaterial, and irrelevant and not the best evidence.

A. Well, I do not recollect just the contents of it, but she informed me——

Q. 14. BURR: Mr. Giles objects to the witness testifying any further to the contents of the letter, for the same reasons as have just been stated, and for the further reason that the witness states that he does not know the contents of it.

406 Q. 15. Do you know the substance of the letter—the contents of it?

BURR: We object again, because the witness has sworn that he does not remember the contents of the letter.

A. Well, I do not remember the full contents of the letter, I say again, but a portion of the letter I do remember.
Q. 16. Do you know the subject-matter about which the letter was written?
A. Yes, sir; I remember the subject-matter, but the full contents I do not remember.
Q. 17. Do you know what was said about that subject-matter?
A. Well, I know a portion of it; I remember a portion of it.
Q. 18. State as near as you recollect.

BURR: I object for the same reasons just stated, and that it is incompetent to state a portion of a letter and not know the whole of it; that to state a portion of the contents when the witness swears several times that he does not know all the contents of the letter is incompetent, not the best evidence, and immaterial and irrelevant.

A. Well, the letter—the contents that I remember—that she told me where she was living, and that she was a widow; and that if I had any business out here—through this country—to call and see them.
Q. 19. What was the date of the letter, do you know?
A. It was written seven years ago last February.

Burr moved to strike out the answer as incompetent, immaterial, and irrelevant.

Q. 20. Where was you residing at that time?
A. I was making my home in Brown county, Ohio.
Q. 21. Where did you get your mail?
A. I got it at New Hope, Brown county, Ohio.
Q. 22. When did you next hear from her?
407 A. Well, I continued to hear from her for some time; I do not remember how long; it was two years, perhaps, after that. I got three or four letters at that office; I do not remember how many.
Q. 23. Did you see her afterwards?
A. I did, some time after that; I do not remember how long it was; two years, perhaps, after that. I was out here in Nebraska and saw her; I do not remember just the time; I did not date it, because I did not know I should be called to figure after it any more, and did not keep the particular date—about two years after that, however.
Q. 24. Was there any special inducement to visit her at that time?
A. Nothing more than that she was writing to me in regard to marrying, and I was a widower.

BURR: We move to strike out this answer and all the evidence of witness as being hearsay, not the best evidence, and incompetent, immaterial, and irrelevant.

Q. 25. When did she write to you regarding marrying?
A. She indicated that all through her letters.

Burr moved to strike out the answer as incompetent, hearsay, not the best evidence, immaterial, and irrelevant, and we object for the same reasons.

Q. 26. State when she first mentioned the subject of marrying to you.

Burr objected to the question for the reasons last stated.

A. Well, I do not know when she came right out to state to me to marry—I do not remember—but it was before I came out here, and I guess it was two years after the first letter—along some time about that; I could not pretend to date it.
Q. 27. What place do you mean by here?
A. This place, Lincoln town, up here where she lived—a
408 white house by the large brick that she built—at least she told me she built it.
Q. 28. How long did you remain here at that time?
A. I stayed here two nights.
Q. 29. Did you have any conversation with her in respect to this matter during your visit?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. Not the first time; no, sir.
Q. 30. Where did you go from here?
A. I went back to Ohio.
Q. 31. Did you hear from her afterwards?

A. Yes, I heard from her when I got back. There was a letter from her in the office when I got back.

Q. 32. Was anything there said about the matter of marrying?

A. No, sir; I do not think there was anything in particular more in that letter about marrying, only the letters, as I said before——

BURR: We object and move to strike that out as incompetent, immaterial, irrelevant, and hearsay.

Q. 33. Was the subject of marrying afterwards mentioned in the correspondence?

Burr objected [as] incompetent, immaterial, irrelevant, and hearsay.

A. Well, it was mentioned; there was indications in every letter—more or less in every letter.

Burr moved to strike out the answer as incompetent, not responsive, immaterial, not the best evidence, and hearsay.

Q. 34. When did you next see her?

A. I next saw her in this place again the time I was here.

Q. 35. When?

A. Well, I came here the 7th day of February last—February three years ago—and on the morning of the 8th I went up to her house and saw her. If my memory serves me right that is the date.

Q. 36. Any conversation about marrying then?

A. Yes.

409 Q. 37. What was it?

A. Well, she had written to me. (BURR: Wait a minute. We object [as] incompetent, immaterial, and irrelevant, under the issues joined, a conversation between this woman and this man not being of any importance or bearing on the issues in this case, none of the parties to this suit being present, and is wholly incompetent.) She had written me a letter asking me to come.

BURR: We object as not being responsive, and move to strike out anything about a letter as immaterial, not the best evidence, incompetent, and hearsay.

Q. 38. State what the conversation was.

A. She wrote me in that letter for her sake to come out and spend my days with her.

BURR: We object as not responsive, and move to strike out the answer for the reason; and the witness is talking about the contents of a letter which is incompetent, hearsay, immaterial, and irrelevant.

Q. 39. State what conversation you had with her.

WITNESS: When I came here?

AMES: Yes.

A. Well, we talked about marrying.

Q. 40. What was it; what did you say?

A. I told her I had come out for that purpose.

Burr objected [as] incompetent, immaterial, and irrelevant, the conversation between this man and this woman.

Q. 41. Go on.

A. Well, we talked about marrying. I told her I had come out to marry her; that was my business here.

Q. 42. What did she say about it? Go on and relate the whole conversation.

A. Well, we talked about marrying, and she said she could not marry at this time. (Burr objected to this testimony as incompetent, immaterial, and irrelevant, the conversation between this man
410 and woman.) That she could not marry at this time; that she could not marry until she had sold her property; and that she thought that her lawyer had a chance to sell it; and that she would ascertain—she would send down to know when he thought she could sell it.

Q. 43. Did you have more than one conversation with her at that time about that matter?

A. Yes, sir; I talked with her several times during my stay at that time.

BURR: We object to any further conversation, and to any conversation between this man and this woman, the parties not being present, as incompetent, immaterial, and irrelevant.

Q. 44. In any of these conversations was anything further said about this matter?

Burr objected [as] incompetent, immaterial, and irrelevant—any conversations between this man and this woman—the parties not being present.

A. She spoke several times of her property; that she wanted to get that sold; that she had been advised to sell her property before marrying.

Q. 45. Did she say who advised her?

A. She spoke of her lawyer; I did not know who her lawyer was at that time; I afterwards learned that Mr. Burr was her lawyer.

BURR: We object to the answer as not responsive to any question, and move to strike it out for that reason—who her lawyer was—no question being asked to that effect, and it is wholly incompetent, immaterial, and irrelevant.

Q. 46. Was any other person present at any of these conversations?

A. No, sir; we were alone.

Q. 47. What next occurred after that in reference to this matter?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. Well, after I was there—I think I stayed there that
411 time about a week—I think it was about a week—I went away—started to go away; she had learned, so she said, from her son William, from her lawyer——

BURR: We object to the statements of the woman Dawson from

her son William as incompetent, hearsay, immaterial, and irrelevant, and nothing to do with the issues in this case.

Q. 48. What was the next occurrence, Mr. Pickering?

A. She stated her son had told her——

BURR: We object to what the son told the mother as being incompetent, immaterial, and irrelevant.

Q. 49. You need not state what he told her; tell what next occurred.

WITNESS: I did not finish what he had told her; you stopped me.

Q. 50. Did you marry her?

A. Yes, sir.

Q. When?

A. I married her on the 14th day of November, '79, I believe, if I have got the date right; I never set down anything; it was not worth while to note these things down.

Q. 52. Before your marriage did you see her in Cass county, in this State?

A. Yes, sir.

Q. 53. What time?

A. I could not state the first time; I saw her frequently in Cass county; I married her in Cass county; but the first time I saw her was a month, six weeks, or two months before the marriage. I seen her—she came down there to look at a farm and buy it.

Q. 54. Did she buy the farm at that time?

A. Yes, sir; she bought it.

Q. 55. At that time?

A. Yes; that is, she closed the contract at that time; she drew the writings at that time.

BURR: We object as incompetent, immaterial, and irrelevant.

Q. 56. Did you have a conversation with her about the matter then?

A. Well, yes; at the time she came down to buy the farm.

412 Q. 57. What was it?

Burr objected to the conversation this woman had with this man after they were married as incompetent, immaterial, and irrelevant.

WITNESS: This was before we were married.

BURR: We object [as] incompetent, immaterial, and irrelevant—the conversation before or after the marriage.

A. Well, sir, she asked me when we would fix up our business.

Q. 58. Where did that occur?

A. That occurred in Applegate's field, going from the house to the carriage.

Q. 59. To what business did she allude?

Burr objected as incompetent, immaterial, and irrelevant, and as calling for what this woman alluded to, and for this witness to explain what the witness alluded to.

Q. 60. What business were you talking about?

Burr interposed the same objection as to question 59.

A. She asked me when we was to fix up our business.
Q. 61. What business?
A. We were talking about marrying.
Q. 62. What did you say about it?
A. I told her it was left to herself; I had wrote all I had to write about it and said all I had to say about it; it was left to herself.
Q. 63. Well?
A. She said we would put it off till they moved down, and then we would fix it up.
Q. 64. Did she move down?
A. She moved down some time after. I told you I have not taken dates. She moved down, and we were married a short time after they moved down.
Q. 65. Was anybody present at this last conversation?
A. No, sir; there was nobody present at the last conversation. Her son was with her, but he was not there. He came out with a carriage and went back to the house.
Q. 66. When was the next conversation you had with her?
A. After they moved down there.
413 Q. 67. What was that?

BURR: We object again [as] incompetent, immaterial, and irrelevant, and calling for the conversation between this man and this woman in the absence and away from any of the parties to this suit, any of the heirs, or any of the heirs' grantees.

A. I went to her house after they moved down there and we talked again about marrying; that seemed to be the greatest subject at that time.
Q. 68. Was any time fixed for marrying?
A. Yes, sir.
Q. 69. What time?
A. That was to be in two weeks from that day; that was on Sunday I was there.
Q. 70. Did you marry at that time?
A. No, sir; we were not married at that time.
Q. 71. For what reason?

Burr objected [as] incompetent, immaterial, and irrelevant, and calling for the reasons of this lady to be expressed by this witness, which is incompent.

A. Well, sir, she said the reasons she had put it off there was some writings to be signed they wanted fixed up before we were married and that she would put it off another week.
Q. 72. Did she say what the writings were?

Burr objected [as] incompetent, immaterial, and irrelevant, and calling for hearsay evidence what Mrs. Dawson said to him.

A. I did afterwards.
Q. 73. Was anybody present at this conversation?

A. No, sir; I do not know that there was.
Q. 74. You say you heard afterwards what these writings were?
A. Yes.
Q. 75. When did you hear?

BURR: We object; he is testifying to what he heard from other parties and hearsay.

A. I have heard part of it from her son William.
Q. 76. When was that?
A. It was after I was married.
414 Q. 77. How long after you were married?
A. Well, it was a few days; I could not say how long—a week or so. I would not pretend to give the dates.
Q. 78. What did you hear from William then?

BURR: We object as calling for hearsay testimony; as being incompetent, immaterial, and irrelevant; as testifying as to what William Dawson heard from his mother, and this witness is trying to tell that; and this man at that time was the husband of Mrs. Dawson, and that, under sec. 332, page 575, of the compiled statutes of Nebraska, he is incompetent to be a witness in this action to testify against the relations of his wife at that time.

A. I heard him *to* say it was a contract they wanted to have signed between them and Burr, their lawyer; and I heard her say the same.
Q. 79. When did you hear them say that?
A. It was a short time after I was married.
Q. 80. Where was it?
A. It was at their house.
Q. 81. When did she say that?

BURR: We object to this as being incompetent, immaterial, irrelevant, and hearsay, and not the best evidence.

A. It was along about the same time—in the turn of a couple of weeks from the time of the marriage. I heard them talking about it—giving me the reason why the wedding was put off.
Q. 82. Did you hear — either Mrs. Dawson, your wife, or from William or Albert, at any time what the contract was?

BURR: We object as incompetent, immaterial, and irrelevant, and calling for hearsay testimony, and calling for the contents of a contract.

A. He said it was a contract between the heirs and Burr for trying to get back this property that they sold here in Lincoln; and she told me the same.
415 Q. 83. Did you ever see the contract?
A. I never saw the contract; I heard Bert (Albert) read it.
Q. 84. Who is Bert?
A. That is her son—the youngest son.
Q. 85. When did he read it?
A. It was some months after that; when he came from out West.

Q. 86. Did you have any further conversation with Albert or William?

Burr objected [as] incompetent, immaterial, irrelevant, and hearsay.

A. I heard a conversation between her and her son William in relation to this property matter.

BURR: We object for the further reason that by the statutes of Nebraska he cannot state the conversation, being prohibited from doing so; and we move to strike out this testimony.

Q. 87. Where was that conversation, what particular place?
A. It was at their own house.
Q. 88. Were you in the room?
A. No, sir; I was not.
Q. 89. What was the conversation?
WITNESS: I was outside.

Burr objected to this testimony, the objections being set out in ques[tion] 86, making now the same objections.

Q. 90. Just state what the conversation was.
A. The conversation between him and her was this—she was standing against the window and I was right outside. They had got a letter from Burr. She went into the room while he read the letter. He was hoarse and I did not hear the letter; but I heard her say, "Don't let him know (meaning me) I was advised to marry him so you children could get the property back, for if he gets out of humor he will go and tell I was advised to marry him, and I don't wan't people to know it." This was the conversation. "And
when Bert comes back he will raise a difficulty with him;
416 and I will take sides with Albert and drive him off." That
was the conversation I heard—that was the conversation I heard anyhow.
Q. 91. Did you hear any further conversation that you have not already related?
A. Yes, sir.
Q. 92. When was it?
A. I heard a conversation in regard to the matter about the time, as I understood, through Knicely. He had a paper there stating they had commenced suit. (BURR: We object as incompetent, irrelevant, and immaterial, calling for hearsay testimony—what one Knicely said and done—and as not the best evidence.) Knicely had a paper there stating she had removed to Iowa and married her first love. They was laughing a little over it among them. She came along and she says, speaking of the property——

BURR: I object; under the statutes of Nebraska he is prohibited from stating this.

Q. 93. What did she say?
A. If I am prohibited I do not want to talk—if the statute prohibits me.

AMES: Burr cannot prohibit you.
BURR: Take that down—I want that down, too.

Q. 94. What did she say?
A. Speaking of this property she said she had done her part and it was left for them to do the balance—speaking about the marrying, and speaking about the property.
Q. 95. Who was Knicely?
A. A son-in-law.
Q. 96. Where was he living?
A. His wife at that time was there; living there.
Q. 97. Who was his wife?
A. She was Mrs. Dawson's daughter.
Q. 98. Of whom did that household consist—who were the family?
A. Well, there was William and his wife and child.
Q. 99. William who?
417 A. William Dawson and his wife and child. Knicely's wife was there, and he was there frequently—made that his headquarters at that that time—and her two girls.
Q. 100. What were their names?
A. Melita and—well, I cannot call it just now; I will directly—Minnie. That was the names of all the family, except the old lady and myself.
Q. 101. Was there any common or general understanding among the members of that family about the object and purpose of that marriage?

BURR: We object as incompetent, immaterial, and irrelevant, and foul and scandalous.

A. I learned there was after I was married.
Q. 102. Do you know what understanding — was?

BURR: We object to this witness testifying what he supposed after he was married of an understanding some one had before he was married, this being a supposition following a supposition, and that is incompetent, immaterial, and irrelevant.

A. That understanding was they were inducing me to marry so they could get the property.
Q. 103. Did you have a conversation with Mr. Burr about it?
A. Yes.
Q. 104. When?
A. In May; two years ago last May.
Q. 105. Where was it?
A. At his office.
Q. 105½. What was it?
A. Mr. Burr spoke of her marrying; said there was some talk between Knicely and him about the property. (Burr objected [as] incompetent, immaterial, irrelevant, and hearsay.) And there was some talk between him and me. Mr. Burr told me he had been her adviser—speaking of the property and marrying—that he had been her adviser and lawyer all through this matter. That is the first

and only time I saw Mr. Burr till I met him here, and I think it is the same man.

Q. 106. Are you and your wife living together here now?

A. No, sir.

418 Q. 107. How long since you have been living together?

A. It is about two years since we have lived together.

Q. 108. How long did you live together?

A. About 7 or 8 months. I do not know just how long we did live together. As I said before, I did not note it down.

Q. 109. What was the cause of your separation?

BURR: We make no objections to the answers, but we do say to the witness that under the statutes of Nebraska he is prohibited from answering, and that his relations to his wife are shut out by the statute.

WITNESS: I am only here under the law, Mr. If the law does not justify me in talking I do not wish to talk.

AMES: Answer the question.

A. The cause of our separation was that Albert came there and I asked him if he was going to rent some land—if he had left his western farm—and he said he had. I asked him if he was going to rent some land, and he said no; that he was going to live there; and I asked him, then, if he expected to control the place. He said he did. I told him I might as well give him the control of it. He said that was what he was waiting for. I then proposed buying his interest in his homestead. I offered him $100 for it in corn, at 15 cents a bushel.

Q. 110. Tell the cause of the separation.

BURR: All right; go on and tell it.

AMES: Go ahead.

A. He objected to giving it, and went and told his mother; and I came around by the way and heard him tell her. She was in the cook-house, and I came round by the well, and she told me she wanted me to take my horses and go away.

Q. 111. Did you go?

A. I told her as quick as I could get my horses I would. I had bought four Texas horses. One was loose, and I snared it and went away.

419 Cross-examined by BURR:

Q. 112. Are you acquainted with Joseph H. Brown or J. H. Brown?

A. I do not know; but does he live here in this place?

Q. 113. Justice of the peace, and lives in town.

A. Yes, I am acquainted with that man, and he came to see me twice. The last time he brought a subpœna down—came and served a subpœna, and told me I would have to come to the United States court.

Q. 114. Has he paid you any money?

A. Not a cent; not any money; he paid my expenses; he came up there.

Q. 115. In coming?

A. Paid it in Wheeler; and told me he had a subpœna for me. I told him I did not know how to get there. Says I, "I have paid out all the money I have for a piece of land—a quarter—I have no money to pay expenses; will the court force me there?" He said, "It would." Says he, "I will pay your expenses down, and you can get your fees."

Q. 116. The first time he came to see you at Factoryville?

A. Yes.

Q. 117. How much did you ask to testify in this case?

A. I never asked anything. I was paid no money to testify in it. He gave me $5 to go to Nebraska City.

Q. 118. Did you not demand $5,000?

A. I do not know I demanded anything at all; I told him I did not want to testify.

Q. 119. Did you not write me a letter and tell me you had been offered $5,000?

A. No, I did not; let—— (Ames objected to the testimony about the contents of the letter. BURR: I do not want the contents; I want to know.) I can tell you what the contents of the letter is—that is, what I put in it; I do not know what is in it now.

Q. 120. On December 29th, '80, you wrote me a letter, did not you, from Factoryville?

A. Yes, sir, I did; I wrote you two.

420 Q. 121. Mr. Brown had been there to see you about that time?

A. No, sir; I never saw Mr. Brown.

Q. 122. Just before?

A. No, sir; I never wrote you but one letter; I wrote you three letters, and two since that, but it was one case you wanted to know about.

Q. 123. Mr. Brown did not tell you they would give you $5,000?

A. No, sir; he did not; I told you he gave me $5 at one time.

Q. 124. Did you not tell me you had demanded $5,000 when you came to see me?

A. No, sir.

Q. 125. Is it not a fact he offered you money?

A. It is a fact he gave me $5 to go to Nebraska City.

Q. 126. Considerable money?

A. No, sir; he made no considerable—I told him I did not want to testify; it was an unpleasant thing.

Q. 127. Did you not tell him you were glad of an opportunity now to get even with the Dawsons?

AMES: Wait.

WITNESS: I did not tell him no such thing.

Q. 128. You did not?

A. It makes no difference anyhow that, particularly.

Q. 129. How many were living at Factoryville when you were living there?

A. There was Will and his wife and child; Knicely was making

his home there; Knicely's wife was making her home there a good portion of her time during her last sickness, and Mr. Knicely was making his headquarters there, coming in every once in awhile, and the two girls.

Q. 130. And you and your wife?

A. Me and the old lady.

Q. 131. You mean Mrs.——

A. I mean Mrs. Dawson; she never treated me as a wife.

Q. 132. She never treated you as a wife?

A. She never treated me as a husband.

421 Q. 133. How large is the house you were then living in?

A. The house has three rooms in it—let me see—there is four rooms in it.

Q. 134. The rooms are small, are they not?

A. The rooms are not large.

Q. 135. Rather a poor house? The house is not very good?

A. No, sir; not a very good house.

Q. 136. A small one-story house?

A. Yes.

Q. 137. And been built a long time?

A. I do not know how long; I was not there when it was built.

Q. 138. It has that appearance?

A. Yes; it has that appearance. I believe the neighbors told me 10 or 12 years.

Q. 139. How long did you live in that house with all those persons?

A. We moved there in March—some time in March. I told you some time ago I did not take dates.

Q. 140. Where did Widow Dawson live when you were married?

A. She lived in Grover's house.

Q. 141. You moved shortly after?

A. Then we moved there in March; they were living there when I left Cass county.

Q. 142. While you was in that house William Dawson died, did not he?

A. Not while I was there; he died after I left.

Q. 143. He was sick?

A. Sick a good portion of the time.

Q. 144. Confined to his bed a good portion of the time?

A. Not while I was there.

Q. 145. Sick all the time?

A. He was not able to do anything.

Q. 146. Had consumption?

A. That is what the doctors said.

Q. 147. Gradually wasting away?

A. Yes.

Q. 148. Evaline, did she die there?

A. Yes; Knicely's wife died while I was there.

422 Q. 149. She lingered of consumption, and died while you were there?

A. Yes; she died while I was there.

Q. 150. There was a great deal of sickness in the family while you was there?

A. Yes; the two was sick.

Q. 151. Under the doctor's care?

A. Under the doctor's care most of the time.

Q. 152. That was expensive and very toilsome, was it not?

A. I suppose it was expensive.

Q. 153. You suppose; do you not know something about it?

A. Very little.

Q. 154. Was it all pleasant and agreeable in a little house of that kind, with so much sickness there?

A. It was as pleasant as could be expected; but sickness is not pleasant nowhere.

Q. 155. Was this your first experience in the matrimonial line?

A. No; I was married once before.

Q. 156. Back in Ohio?

A. Well, back in Ohio.

Q. 157. Is your other wife living now?

A. No, sir; she died years ago.

Q. 158. Did you get a divorce from your dead wife?

A. She died years ago.

Q. 159. Was there a divorce at the time she died?

A. No, sir; death gave me a divorce.

Q. 160. How long was you acquainted with Mrs. Dawson back in Ohio?

A. We were raised children together.

Q. 161. Neighbors?

A. Neighbors.

Q. 162. How far from there did Jacob Dawson live?

A. I do not know; he is a man I never saw but once.

Q. 163. What was Mrs. Dawson's age at the time she moved to Nebraska?

423 A. I do not know; I do not know whether they moved directly to Nebraska; I do not know where they moved to when they came West.

Q. 164. What was her age?

A. Her age—she was about 20 years old, if I remember her age. I remember the time she left—she left about the time I was married.

Q. 165. How did you first learn of her after being out here 20 years?

A. She wrote to my sister inquiring about me, so my sister told me.

Q. 166. Your sister told — Mrs. Dawson had written to her asking where you was?

A. Yes, sir; she told me. I was in Texas and would be home about the first of March. I came home the 23rd of February, I believe, or the 24th, and I found a letter from Mrs. Dawson.

Q. 167. You answered the letter, did you?

A. Yes, sir; I answered the letter.

Q. 168. You say you came out to Nebraska after you had received letters from her?

A. Yes, sir; I came here.

Q. 169. But before you came out you received six or seven letters?

A. I do not know how many; I expect a bit more too, perhaps.

Q. 170. Before she came right out and made a fair proposal of marriage, in one of these six or seven letters?

A. No, sir; you misunderstand me if you understand this way. She never made no fair proposal to me till after I came back here; if you have got it down that way you have got it wrong; I did not say so.

Q. 171. You say you do not remember particularly the contents of the letters?

A. do not remember all the words of the letters. I remember the important contents of the letters.

424 Q. 172. You swore in your direct examination that all through these 3, 4, 5, or 6 letters she said she wanted to marry.

A. I guess I did not say wanted to marry. I said indicated; the indications through the letters was to marry, and that was the indications in all the letters.

Q. 173. Now you change it to indications.

A. Yes, sir.

Q. 174. You did say in your direct examination that you did not know when she came right out and wanted you to marry her; did she come right out and want you to marry her?

A. She proposed it; yes.

Q. 175. She proposed it to you?

A. Yes, she proposed it to me, and for her sake to spend my days with her.

Q. 176. When you came out here you was out there two nights?

A. That was the first time. I was out two nights—that was the last time I was here.

Q. 177. You said you had no conversation about marrying when you were here the two nights.

A. I did not say so.

Q. 178. Did you not say so in your direct examination?

A. I did not say I had no conversation about marrying.

Q. 179. Did you not say you had no conversation in your direct examination—no conversation about marrying?

A. No; you did not understand me so.

Q. 180. You did not propose to marry her when you came out first?

A. I did not say she proposed it. I said we talked about marrying some.

Q. 181. You said in you direct examination, and repeated it twice, that she spoke about marrying; that it was talked about between you and her when you came and stayed the two nights; now you change it and say it is a mistake.

A. I said that at first.

425 Q. 182. You did speak about it?

A. Yes.

Q. 183. When you had your direct examination you repeated it twice that you had no conversation?

A. I said we talked about it.

Q. 184. You retract that?

A. No, I do not retract; that is what I said at first.

Q. 185. It is not in the record.

A. I do not know what is in the record; I did not write it.

Q. 186. It is not in the record by the reporter that you did not have any conversation—that conversation—when you first came out here about being married?

A. I do not know what the reporter has got.

Q. 187. Where did you stay the two nights?

A. I stayed there; I——

Q. 188. At her home?

A. Yes, sir.

Q. 189. It was on the 7th of February, '79, when you came back here?

A. I reckon it was in '79—I think it was '79 when I got here.

Q. 190. And you went immediately to her home?

A. I did not; on the 8th I went there.

Q. 191. On the 8th you went up there?

A. Yes, sir.

Q. 192. You stayed there then?

A. Yes, sir.

Q. 193. Made it your home?

A. Yes, sir.

Q. 194. Till you got married?

A. No, sir; till I went down to Cass county.

Q. 195. Till you and she went to Cass county?

A. No, sir.

Q. 196. You both went to Cass county immediately after?

A. No, she did not go to Cass county till some months after that.

Q. 197. How long?

A. Some months; I do not know how long.

Q. 198. How long before she came there had you been there?

WITNESS: In Cass county?

BURR: Yes.

426 A. I went there in the spring and she came in the fall.

Q. 199. Then you got married—then you were married, were not you?

A. We were married there.

Q. 200. You told her your business out here was to get married?

A. Yes, sir.

Q. 201. That is what you told her. How long did you live or remain at Mrs. Dawson's home when you came here the last time?

A. I do not remember.

Q. 202. In Capital addition when you came here?

A. I do not remember; I do not mind; 4 or 5, 5 or 6 days, perhaps; I cannot say; 5 or 6 days.

Q. 203. You saw the large brick home she owned heretofore?

A. She told me she built that house.

Q. 204. It was quite an elegant home?

A. I do not know; I was never in it.

Q. 205. They were living in a home—a good frame house?

A. They was living in a frame house.

Q. 206. She was living in the home she had always lived in on the land?

A. I did not so understand her.

Q. 207. You did not?

A. No; I did not; I understood her they had lived in the brick house.

Q. 208. The old homestead?

A. I do not know; she was living in a white frame house; I do not know she called it the homestead. I understood her to say she had built that after she built the brick house.

Q. 209. When did you first see L. C. Burr?

A. Two years ago last May. I came out here for a carriage for them.

Q. 209. That was Mrs. Dawson's carriage, down at Morton's carriage shop?

A. It was Mrs. Dawson's carriage.

Q. 210. Did you bring that paper up to me? (Paper produced.)

427 A. I do not say whether I did or not; I could not say.

Q. 211. Whose signature is at the bottom of that?

A. It looks like mine.

Q. 212. Please read it.

A. I do not know whether I can or not; I do not know whether I can see to read it; I cannot see to read it to-night. (A pair of spectacles were here handed to witness.) There is no signature there I signed.

Q. 213. Whose signature is it?

A. Why, it is for you to say.

Q. 214. Do you swear you do not know whose signature it is?

A. I do not swear that; I swear I do not know who signed it. That is Will. Dawson's.

Q. 215. Do you say you handed this to me when you came in?

A. I won't swear whether I did or not; I do not know anything about it; I may have handed it or not; I do not know anything about it; if I gave it to you I may never have looked at it. It is not my signature; my name is not on that, I see; if it is on it I do not see it.

(A paper handed to witness was marked (x) by the examiner.

Q. 216. I ask the witness to take it and see it.

A. I have looked at——(again examining the paper). Yes; I see my name here on it at the top.

Q. 217. Can you tell after examining whether that is the paper you handed me?

A. I do not know anything about it. There is no writing I there done.

Q. 218. Did you bring this letter to me?

A. I do not know that I did; I do not know what the contents was, and I do not know anything about the letter.

Q. 219. Did William Dawson give you a letter which you handed to me when you came to see me?

Ames objected [as] incompetent and improper cross-examination.

428 Q. 220. Will you say you did not?

A. I won't say I did not or did; I won't say nothing about the paper, but what I do know I will tell; it makes no difference whether it is to the point or not.

Q. 221. Whose writing is that?

(Showing witness a paper.)

A. It is likely it is mine.

Q. 222. You directed that?

A. I will tell you directly.

Q. 223. Look at all three of these.

(3 envelopes and the enclosures.)

A. Yes, sir; them envelopes is my handwriting.

Envelopes marked by the examiner thus: 4 # 1

Q. 224. I want you to look at the letters.

A. This is mine, this is mine, this is mine.

Papers marked 1 # 4

Witness excused.

429 AMES: We will offer in evidence this document. (Producing one.)

BURR: We object to its introduction as incompetent, immaterial, and irrelevant; because the original has not been accounted for; because this is a pretended copy of the pretended cross-bill, and the original (if there was one) was filed in the district court of Lancaster county, Nebraska, after all of the proceedings had been transferred to the Federal court, and there was no case pending in the district court of Lancaster county, Nebraska, at the time that this was filed; and because it was *coram non judice.*

The following is a copy of the paper thus put in evidence under objection and marked "Exhibit V."

Separate Answer of the Dawson Heirs and Cross-Petition.

In the District Court of the 2nd Judicial District of Nebraska in and for Lancaster County.

S. W. LITTLE, SAMUEL ARBUCKLE, D. B. ALEXANDER, A. J. SAWYER, S. G. Owen, Lorenzo Assmussen, R. H. Oakley, Sarah J. Purcell, A. P. S. Stewart, and Others, Plaintiffs,

vs.

EZEKIEL GILES, L. C. BURR. H. H. WHEELER, ALBERT L. DAWSON, Carlton Dawson, Infant Heir of William R. Dawson, Dec'd; Sarah H. Dawson, Widow of said William R. Dawson, Dec'd; M. C. Dawson, Infant Heir of Jacob Dawson, Dec'd; M. L. Dawson, A. A. Knicely, William A. J. Goodwin, and Melita C. D. Tillman, Defendants.

Separate answer and cross-petition of Albert L. Dawson, Carlton Dawson, infant heir of William R. Dawson, dec'd; Sarah H. Dawson, widow of the said William R. Dawson, dec'd; M. C. Dawson, infant heir of Jacob Dawson, dec'd, M. L. Dawson, and Melita C. D. Tillman.

430 And now come the said defendants, Albert L. Dawson; Carlton Dawson, infant heir of William R. Dawson, dec'd; Sarah H. Dawson, widow of said William R. Dawson, dec'd; M. C. Dawson, infant heir of Jacob Dawson, dec'd; M. L. Dawson, and Melita C. D. Tillman, and, for their separate answer to so much and such parts of the petition and bill of complaint of said complainants, filed herein, as they are advised is material or necessary for them to make answer hereto, and for their cross-petition herein, praying affirmative relief, answering, say:

That they admit that on the 15th day of June, A. D. 1869, and thence to his death, Jacob Dawson, the common ancestor of these defendants, was seized in fee-simple and possessed of divers pieces and parcels of real estate, to wit: The west half of southeast quarter of section nineteen (19), township ten (10) north, of range No. seven (7), and the east half of the northeast quarter and the southeast — of the southeast quarter of section number thirty-five (35), in township No. ten (10) north, in range No. six (6) east, of the sixth principal meridian, in Lancaster county, State of Nebraska; also lots numbered three (3), four (4), five (5), and six (6), in block number fifty-four (54), in the then town, now city, of Lincoln, in the county and State aforesaid.

And they further admit that on said last-mentioned day the said Jacob Dawson made and executed his last will and testament, and that said last will and testament is correctly set forth in the bill of complaint of said complainants.

These defendants further admit that Edith J. Dawson, widow of said Jacob Dawson, was named in said last will and testament as the executrix of the estate of said Jacob Dawson, and that, on the
431 22nd day of June, 1869, the said Jacob Dawson died in Lancaster county, in the State of Nebraska; that said last will

and testament of the said Dawson was thereafter duly proved and admitted to probate in the probate court of said county, and letters testamentary thereon were issued out of said court to the said Edith J. Dawson, who assumed the duties and trust thus imposed. They further admit that at the time of the making of said last will and testament by the said Jacob Dawson and until his death he resided with his family in a stone building which had not been fully completed at the time of his death, but they deny that said building was unfit for habitation; on the contrary, they aver that it was in every way a comfortable and habitable dwelling and fully suited to the wants and comfort of the family of said Dawson in that particular; and they further deny that it was poorly planned and of no value.

These defendants further admit that said Jacob Dawson left no considerable amount of personal property, but they are not prepared to admit that the statement of amount in plaintiff's bill in that particular is correct, and therefore demand full proof thereof.

They further deny that the real estate of which said Jacob Dawson died seized was of no greater value than ten thousand dollars, but they allege and aver that it was of much greater value than that sum; and they deny that on said 15th day of June, 1869, the said Jacob Dawson was indebted to any party or parties in the sum of five thousand dollars or in any other sum approximating thereto. They admit that his said indebtedness at that time and at the time of his death amounted to a few hundred dollars, but they aver that the same was discharged out of the personal property left and belonging to his said estate; that while they admit that this
432 mode of payment was not in strict compliance with the law governing such matters; they aver and charge that the records of the probate court of said Lancaster county do not show that any debts were presented and allowed by said court against said estate in the usual manner, and such as did exist were adjusted in the manner indicated, as no authority or power was conferred upon the executrix by said last will and testament to make sale of the real estate belonging to said estate at her own election for that or any other purpose; and these defendants aver that no debts having been presented and proved and allowed against said estate, the necessity for a resort to the real estate for such purpose, to wit, the purpose of payment, did not exist and no license issued to her out of any court therefor.

And these defendants deny that any necessity existed for the sale of any of the real estate belonging to said estate for the purpose of building a better home for the accommodation of the family, and that in all sales made by Edith J. she acted on the theory that she had some kind of estate in said lands conferred by said last will and testament of her deceased husband which she was at liberty to convey; and these defendants aver and charge that said Edith J. took only a life estate therein, which, by the terms of said will of her said husband, was to terminate upon her marriage with another party, which she since did, as charged and recited in plaintiff's bill of complaint, and which these defendants admit to be true.

These defendants, further answering, say that they are the heirs-at-law and legal representatives of the said Jacob Dawson, and as such are entitled to inherit all the real estate of which he
433 died seized (only a portion of which is described in plaintiff's bill of complaint) after the termination of the estate bequeathed to said Edith J. Dawson in the said last will and testament of the said Jacob Dawson; that of the original heirs of said Jacob Dawson William R. Dawson has since deceased, leaving surviving him the said Carlton Dawson, an infant of tender years and not under guardianship, and his mother, the widow of the said William R. Dawson, and as such heir and legal representative of said William R. Dawson, deceased, is entitled under the laws of the State of Nebraska to inherit the share of his said father in the estate of the said Jacob Dawson, subject to the dower interest of the widow of said William R.

That M. C. Dawson, one of the original heirs of said Jacob Dawson, is also an infant under the age of majority and not under guardianship, and one of these defendants, for whom, together with the said Carlton Dawson, they pray the court to appoint some suitable person their guardian *ad litem* for the purpose of making their defense in this suit; that E. M. Dawson, another of the original heirs of said Jacob Dawson, has since died intestate and without issue, and whose share of her said father's estate in consequence descends in equal parts to her brothers and sisters and the issue of any deceased brother or sister in the manner provided by law.

That of the surviving heirs of said Jacob Dawson and the issue of such as have since deceased who are entitled to inherit the estate of said Jacob Dawson the following-named persons, defendants herein, are all that remain, to wit: Albert L. Dawson, Carlton Dawson, infant heir of William R. Dawson, deceased; Sarah H. Dawson, widow of said William R. Dawson; M. S. Dawson, and Melita C. D. Tillman.

434 These defendants, further answering, say that if any advancement was ever made by the said Edith J. Dawson to any of her children it was most from money arising from the sale of her individual estate in the lands belonging to the estate of said Jacob Dawson, and while he bequeathed to her in his said last will and testament, and not from the sale of any interest the said heirs would have in said land after the termination of the life estate therein of the said Edith J. Dawson. These defendants, therefore, deny that any such advancement was ever made.

Defendants further admit that the said Edith J. Dawson, assuming to be the actual owner of the property of which the said Jacob Dawson died seized subsequent to the decease of her said husband, caused the east half of the northeast quarter of section No. thirty-five (35), in township ten (10) north, of range No. six (6) east, to be surveyed under the laws of Nebraska in such case made and provided, into lots and blocks, which was duly platted and the plat thereof was filed for record in the office of the county clerk of the county of Lancaster and State of Nebraska on the 15th day of June, 1870, and thereafter the land so described above was known and

designated as "Dawson's addition to South Lincoln." But these defendants deny that said Edith J. Dawson sold said lots and blocks for the purpose of raising money with which to discharge the indebtedness of her said husband, or to raise money with which to set up her son, Hampton Dawson, in business, as before that time all the debts of the said Jacob Dawson, including the expenses of his last sickness and subsequent funeral, had been fully paid, as hereinbefore charged and alleged; that all sales made by said Edith J. Dawson of the lots and blocks in said "Dawson's addition to South Lincoln"
435 were made by her upon the hypothesis and assumption that she owned said property in her own right, and had an absolute title thereto in fee-simple, by virtue of the provisions of the last will and testament of her said husband; whereas, in fact and in law, she only had a life estate in said land determinable upon her marriage, as expressly provided and stipulated in said last will and testament, under which she claimed title; and having since intermarried with one Pickering, the title conveyed *to* the said Edith J. Dawson to the said plaintiffs and parties under whose — they claim has ceased and wholly determined, and the right of these defendants to said property by the provisions of said last will and testament of said Jacob Dawson has become absolute and perfect.

That these defendants are not advised as to the amount and value of the improvements put upon said property by said plaintiffs or either of them, and therefore do not either admit or deny their allegations in the particular, as it is wholly unimportant, touching the present inquiry what amount of improvements they or either of them may have put upon said property, as they accepted the conveyance made by the said Edith J. Dawson with a full knowledge of her title and interest in said property and put said improvements thereon, if any, at their own risk and peril, and these defendants therefore deny that they have any legal or equitable right to collect or these defendants to reimburse them or either of them therefor. They further admit that the list of parties, plaintiffs holding claims to said several tracts, parcels, and lots of land aforesaid, contain[ed] in their petition and bill of complaint is correct as far as it goes, but allege that there *are* other property belonging to said estate of Jacob Dawson, and
436 now owned by these defendants, and claimed by other parties not named in said bill, whose names when discovered these defendants pray may be added as party plaintiffs or defendants in this cause.

And these defendants, for a cross-demand in this suit and to the end that the rights of the defendants among themselves may be adjusted touching the subject-matter of this suit, complain and allege that after the intermarriage of the said Edith J. Dawson with the said Pickering, and before these defendants became aware of their rights under said last will and testament of the said Jacob Dawson, two of their codefendants, to wit, Lionel C. Burr and H. H. Wheeler, who were and are attorneys and counsellors at law in the several courts of this State, approached these defendants, answering separately herein, and informed them as such attorneys and counsellors aforesaid that they, as the heirs-at-law and legal representa-

tives of Jacob Dawson, were the rightful owners of all the real estate of which said Jacob Dawson died seized, and that to enforce said right and obtain a recovery of said property from the present occupants and claimants thereof it would be necessary for them (these defendants) to convey all of said property to them, the said Burr and Wheeler. And these defendants, heirs of said Jacob Dawson, deceased, being wholly and entirely ignorant of their rights in the premises, and relying upon the representations of said Burr and Wheeler in that behalf, and according to their demands in the premises, did, on or about the 15th day of September, 1879, together with the wives of such of said heirs as were married, execute and deliver to said Lionel C. Burr and H. H. Wheeler a quit-claim deed to all of said property, but without covenants of warranty, and signed by all the heirs of said Jacob Dawson except Albert
437 L. Dawson and Melita C. D. Tillman, who have, however, since conveyed by like deed to said Burr and Wheeler and Ezekiel Giles at their instance and request.

And these defendants allege that while the consideration mentioned in said deed is $75,000 it was in fact made without any consideration except that which is expressed in a certain contemporaneous and champertous agreement hereinafter more fully set out and at large in this cross-petition.

They further allege and charge that said deed of conveyance from these defendants to said Burr and Wheeler and to the said Giles were all obtained by false and fraudulent representations made to them by said Burr and Wheeler to the effect that without such conveyance nothing whatever could be done to save said property to the rightful owners thereof; that a conveyance by them was an absolute necessity; and to furnish a cure for the fraud intended the said Burr and Wheeler agreed in writing that when they, the said Burr and Wheeler, should come into the possession and be seized in fee-simple absolute of the estate or any part thereof conveyed by said heirs, then they would quit-claim to said heirs the one undivided one-third part thereof, a true copy of which said agreement here follows and is made a part of this cross-petition, to wit:

"This instrument made and entered into this tenth day of November, 1879, between Lionel C. Burr and Hiland H. Wheeler, both of Lancaster county, Nebraska, party of the first part, and William R. Dawson, Albert Dawson, Minnie Dawson, Melita Dawson, and Evaline Dawson Knicely, heirs-at-law of Jacob Dawson, deceased, parties of the second part, witnesseth: That the *first* parties of the first part do hereby agree with the said parties of the second part that whenever the said parties of the first part shall come into
438 the possession and be seized in fee-simple absolute of the estate or any part thereof conveyed by said parties of the second part to said parties of the first part, then said parties of the first part shall quit-claim to said parties of the second part the one-third undivided interest which they, as tenants in fee-simple, have in said premises, or, at the election of said parties of the first part, pay to the said parties of the second part the value of said undivided one-third interest of said estate in cash.

"In witness whereof the said parties have hereunto set their hands and seals the day and year above first written. And if any money comes into hands of us by way of settlement of suits, one-third thereof we will pay to parties of the second part after deducting actual expenses.

"L. C. BURR.
"HILAND H. WHEELER."

Witness to signatures:
H. P. KEMP.

And these defendants say that all that portion of said agreement which is underscored in the foregoing copy was written therein long after its original execution and delivery by some party directed to do so by said Burr and Wheeler, as these defendants are informed and believe, and without the knowledge, consent, or concurrence of any of these defendants.

These defendants further aver and charge that said deeds above described from these defendants to said Burr and Wheeler were not only fraudulently obtained by gross deception and misrepresentation made by said Burr and Wheeler for that purpose, but were founded upon and formed a part of the immoral, unjust, and champertous contract above set out, and has been used, and was intended to be used, as a means to an illegal, inequitable, and grossly unjust —, and both as against these defendants and to all parties having any interest in the estate of said Jacob Dawson, deceased.

439 And these defendants charge and allege that said Burr and Wheeler have, in pursuance of an original preconcocted intention to swindle and defraud these defendants out of their just rights in the estate of said Jacob Dawson, colluded and confederated with divers persons claiming parts of said Dawson estate to convey them the parts thereof claimed by them for a mere nominal sum, and in some cases for some obligation which the said Burr was under by reason of former arrangements, by which said Burr had pledged himself to see that said parties were not disturbed in their title to the said Dawson property, obtained through and by the efforts of said Burr saying at the same time that the heirs could not help themselves, as he and Wheeler held the title to the whole property, and could do as they pleased with it.

That as an evidence that they intended to do as they pleased with the property of these defendants they allege and charge that said Burr and Wheeler have made a deed to the whole of the real estate conveyed by these defendants to them to one Ezekiel Giles, a resident of the State of Iowa, and a person who is financially worthless; that the only consideration for said last-mentioned conveyance is the fact that the said Giles is the father-in-law of said L. C. Burr, and his mere tool to be used for any purpose promotive of the common design to override these defendants. They further allege that said Giles has never paid one dollar for said property, and is financially unable to pay anything for it, nor was it intended or expected by said Burr and Wheeler that he should do so.

Wherefore these defendants pray that said Burr and Wheeler

may be required to answer to this cross-petition, and that, upon the final hearing of this cause, as between these defend-
440 ants and the said Burr and Wheeler and their grantee, Ezekiel Giles, whom they pray may also be compelled to answer hereto, the court may render a decree annulling and cancelling the deeds from these defendants to the said L. C. Burr and H. H. Wheeler, and from said Burr and Wheeler to the said Ezekiel Giles, for the property in controversy in this suit, and also to set aside a deed to some property made by Melita C. D. Tillman to said Ezekiel Giles; also to cause all contracts between these defendants and said Burr and Wheeler to be brought into court and by it duly cancelled, and that the court, by its decree, restore these defendants to their original rights with reference to the property of which their ancestor, Jacob Dawson, died seized, and that they be hence relieved from any embarrassment in the enforcement of their rights by any claim of title on the part of said Burr and Wheeler.

And these defendants further pray that upon a final hearing of this whole case as respects the claims of said plaintiffs that the court will render its decree declaring them the rightful owners, to wit, these defendants, of all the property involved in this suit, and while, by the terms of the last will and testament of said Jacob Dawson belongs wholly to them, the life estate of the said widow having been terminated by her marriage with said Pickering, and that the court further decree that said plaintiffs take nothing for any improvements they or any of them may have put on said property, and grant to these defendants such other and further relief as equity and good conscience may require, and they in duty bound will ever pray.

ISHAM REAVIS,
Solicitor for Defendants, the Heirs of Jacob Dawson, Deceased.

441 STATE OF NEBRASKA, } ss:
County of Otoe, }

Albert L. Dawson, of lawful age, being duly sworn, on oath states that he is one of the heirs-at-law and legal representatives of Jacob Dawson, deceased, and one of the defendants in this case, and one of the parties making the foregoing separate answer; that he has heard the foregoing answer read over, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to all such matters he believes them to be true, and further saith not.

ALBERT L. DAWSON.

Sworn to before me and subscribed in my presence this 20th day of February, 1882.

EDWIN J. MURFIN, [SEAL.]
Notary Public.

Endorsed: S. W. Little *et al. vs.* Ezekiel Giles *et al.* Separate answer of heirs of Dawson and cross-petition praying affirmative relief.

Filed Feb. 21, 1882. A. D. Burr, clerk D. C. Isham Reavis, solicitor for def'ts, heirs of Jacob Dawson.

STATE OF NEBRASKA, }
Lancaster County, } *ss:*

I, A. D. Burr, clerk D. C in and for said county, do hereby certify that [the] above and foregoing is a true and correct copy of answer and cross-petition in cause wherein S. W. Little *et al.* are plaintiffs and Ezekiel Giles *et al.* are defendants, as same appears on files in my office.

In witness whereof I have hereunto set my hand and official seal, at Lincoln, this 21st day of February, 1882.

[Seal Lancaster County.]

A. D. BURR, *Clerk D. C.*

Transcript fee, $5, paid by def't's att'y.

442 *Giles Asks that the Testimony be Completed.*

There being no further evidence ready for taking, and the time and place of adjournment being under consideration, Burr said: Mr. Giles requests that the plaintiffs in this cross-bill bring forward their testimony and close it up; they are doing this for delay and to carry the case over the term of the United States court. We ask that this case be adjourned until Thursday or sooner, if the plaintiffs in the case can produce any testimony.

AMES: I am ready at any early day next week that the examiner will be at liberty to take testimony.

It was ordered that the further taking of testimony in the case be adjourned to Saturday, November 4th, in room No. 7 on the third floor of the Government building, in Lincoln, Nebraska, or at some earlier evening if the parties to cause could agree on such evening.

The further taking of testimony in this cause was resumed on Saturday November 3rd, 1882, in room No. 7, upper floor, at the Government building, Lincoln, Nebraska, Mr. J. M. Woolworth and Mr. L. C. Burr for Giles *et al.*, and Mr. John Ames and Mr. Frank M. Hall for Little *et al.*

Chipman Purchase of Lots in Dawson's Addition.

JESSE P. CHIPMAN sworn and examined by AMES:

Q. 1. Where do you live?
A. I live in Lincoln, Nebraska.
Q. 2. How long have you lived here?
A. I have lived here 5 years.
Q. 3. Are you acquainted with Mr. L. C. Burr?
A. Yes, sir.
Q. 4. How long have you known him?
A. I have known him for about five years.

Q. 5. Do you know the property adjoining Lincoln, commonly known as Dawson's addition to South Lincoln?

A. Yes, sir.

Q. 6. Ever purchase any of that property?

A. I have.

Q. 7. Purchased any more than once?

A. Yes; some three times.

443 Q. 8. When did you purchase the first?

A. I had been almost a year here when I purchased some. I purchased some in August of '78.

Q. 9. Did you have any conversation with Mr. Burr about that purchase?

A. I had.

Q. 10. With reference to the title?

A. Yes, sir.

Q. 11. State what it was.

A. Mrs. Nancy Terwillinger had two lots, and she had a contract or bond for a deed or something—I do not know what it was. She was telling me she had some cheap property—told my wife—and I went and looked at it and came back and struck up a bargain with her for the two lots. Then the question arose how she would transfer her title to me, for she said Mr. Burr would know about that; he was Mrs. Dawson's agent. I went to Mr. Burr's office and laid the matter before him, and he told me the best thing I could do would be to pay up the balance to Mrs. Dawson and take a deed for the two lots. I told him it was not due till the next June, I think it was, and that I could do better with my money than stopping the 10 per cent. interest by using it in my own business. He told me they would make a slight discount and told me what it was, and I hardly felt disposed to take that. Then he said she was owing some—I think he told me a note to the Lancaster County Bank for $1,000, and if I should pay Mrs. Terwillinger's claim and go on this property I should have nothing to show it was mine, and the best thing I could do would be not to pay it, but get a deed for it. I asked him if the title was all right and good, and he told me it was, and I left the money with him.

Q. 12. Did he tell you what the title was, how the title was
444 acquired?

A. He told me it was acquired by the Dawsons through patent from the United States and will to Mrs. Dawson.

Q. 13. Did you believe what he said about the title?

A. Yes; if I had not I would not have bought. I supposed it was all right.

Q. 14. What were the numbers of these lots?

A. Numbers 1 and 2, block 29.

Q. 15. Did you buy any of that property afterwards?

A. I did.

Q. 16. When?

A. I think it was three years ago.

Q. 17. What property was that?

A. That was lots 8, 9, 10, 11, and 12, in block 30, of the same addition to Lincoln.

Q. 18. Between the time of this conversation and the time you bought these lots did you have any conversation with Mr. Burr?

A. No, no.

Q. 19. At the time you had that conversation with Burr about the Terwillinger lots, did you buy the lots?

A. I did.

Q. 20. And pay for them?

A. Yes, sir; I left the money with Mr. Burr; he brought me a deed; at 5 o'clock I called——

Q. 21. Of whom did you purchase these last lots you mention?

A. Of J. D. Johnson.

Q. 22. Paid him for them?

A. Yes, sir.

Q. 23. Did you have any subsequent conversation with Mr. Burr about the title?

A. Well, along about the time I understood there was a decision in favor of Mr. Burr I took my deed and went into Mr. Burr's office and showed him my deed, and asked him——

BURR: I object, because no time or place is named where the conversation took place.

Q. 24. You have named the place. When was that; do you know the time?

A. It was along in the month of August, I think.

445 Q. 25. What year?

A. The year 1878.

Q. 26. What was the time of this last conversation?

A. I could not say exactly. It was some time about a year ago; perhaps not quite.

Q. 27. Where did you say it was?

A. In Mr. Burr's office.

Q. 28. State what that conversation was.

Burr objected [as] incompetent, immaterial, and irrelevant; because he was a party to this suit which was then pending, and because there were other persons at that time parties to that suit, and that any conversation he had with *me* could not bind them, they being the heirs of a deceased person.

A. I took my deed in and handed it to Mr. Burr, and asked him—well, I could not tell the exact words—what that deed was good for, and he took the deed and looked at it and said it was in his handwriting. My object in going there was to try to compromise and get a clear title, if I could, to my lots. I did not want to lose——

Q. 30. State what the conversation was.

A. I asked him about it, and he said he did not know; it was not decided yet exactly; it was going into court again. I told him I would like to clear the thing up. I told him he told me the title was all right. He said he undoubtedly did if he told me anything; he could not remember about that; but he did not bring the suit to

distress me or anybody else, and for a small recompense he would make it all right—the title to the lots.

Cross-examined by BURR:

Q. 31. Are you a party to this action?

A. No.

Q. 32. Do you swear that John H. Ames, T. M. Marquette, N. S. Harwood, S. B. Galey, or N. S. Abbott never had any au-
446 thority to bring this action here for you?

A. Yes; they never had from me.

Q. 33. You never consulted with them?

A. No.

Q. 34. Never retained them or paid them anything?

A. No, sir.

Q. 35. And what they done for you was wholly unauthorized on your part?

A. Yes, sir.

Q. 36. Did you know you was made a party to this suit at the time it was begun?

A. Not till afterwards.

Q. 37. Who told you of it then?

A. Well; I think that Mr. Stuart told me.

Q. 38. Do you now object to this action going on in your name?

A. Well, I do not know whether I object to it or not; I would like my property and all that.

Q. 40. Do you repudiate the action or not?

A. Well; I have nothing to do with it—I expect not to have anything to do with it.

Q. 41. Who was Mrs. Terwillinger?

A. She was—I could not tell you who she was—a lady who lived down by the O-street bridge, just one block, I think, north, and I sold her milk.

Q. 42. What amount of money do you say you paid to me for Mrs. Dawson?

A. I think it was $35 or $37, somewhere about there; I could not tell. She paid $20, I think, and I paid the balance of the contract.

Q. 43. Did she give you any deed?

A. Mrs. Terwillinger? No.

Q. 44. Any writing?

A. No; she gave me a contract, I think.

Q. 45. Do you say that at that time that I talked to you about the will?

A. Yes.

Q. 46. Do you swear now I spoke to you about a will at that time?

A. Yes, sir; I think I did.

Q. 47. Are you sure about it, could you be mistaken about it—was not the first time I ever said anything to you about
447 a will was when you came about a year ago?

A. No; I think it was about the time I came to you about the lots; about getting a deed, the first deed to the lots.

Q. 48. You say I said I thought the title was all right?

A. Yes, sir.

Q. 40. Did you ask me to investigate the title and give you an opinion about it?

A. No; I just asked you as a man who had the lots; it was your business. I asked you——

Q. 50. Did I ever investigate the title for you to know what it was?

A. No.

Q. 51. Did you pay me anything for looking up this title and giving you my opinion?

A. No.

Q. 52. Did you ever bring me an abstract and ask me to look at that, and tell you from that whether there was a title or not?

A. No, sir.

Q. 53. Did you look up the title yourself?

A. No; I did not.

Q. 54. You had before that purchased the lots of Johnson?

A. No; it was after I had purchased of Johnson.

Q. 55. You have other property down there?

A. Yes.

Q. 56. Of whom did you say you purchased that.

A. Of J. D. Johnson.

Q. 57. Have you not still other property than that down there?

A. No; I have not.

Q. 58. Did you buy all the pieces of property you have down there, one from Mr. Johnson and one from Mrs. Terwilliger, then?

A. There is two lots I got from Mrs. Dawson. I bought Mrs. Terwilliger's interest, of which she had no deed, and the other 5 lots I got from Mr. Johnson.

Q. 59. Did I tell you that the title was good, or I thought it was good? Can you remember what was said between you and I?

448 A. I told you, says I, "I suppose this title is all right," and you said it was.

Q. 60. Did I say that it was or that I thought it was?

A. I think you said it was.

Q. 61. Did I go with you and look up the title?

A. No, sir.

Q. 62. Did you ask me to?

A. No; I took your word for it.

Q. 63. Did I go with you and look up the title?

A. No, sir.

Q. 63*x*. The county records was not far away from my office at that time?

A. No; it was [in] the same building.

Q. 64. You did not request me or pay me for any services of this kind?

A. No.

Witness excused.

Paper Produced on Behalf of Hawley.

AMES: Here is an agreement (paper produced and exhibited to Burr) made between you and Mr. Hawley which you requested Mr. Hawley to produce—between yourself and Mr. Webster on the one part and Hawley on the other. I produce that agreement on behalf of the witness.

Motion to Strike Out Hawley's Testimony.

BURR: I offer the agreement now produced in evidence and move to strike out all the testimony of Allen W. Hawley in relation to that contract, because the contract is the only competent evidence.

The paper being put in evidence was marked "Exhibit W," and the following is a copy of the same:

Agreement Between Hawley & Burr & Webster, Introduced by Giles.

Articles of agreement made and entered into this 5th day of April, 1878, by and between J. R. Webster, L. C. Burr, of the first part, and A. W. Hawley, of second part, witnesseth:

That whereas the said party of the second part is desirous of purchasing the W. half of S. E. 4th, 19, 10, 7 E., Lancaster county, Nebraska; and whereas the title, both legal and equitable, to said tract of land was prior to the 1st day of April, 1877, in Edith J. Dawson, of said county, and in or about said date the said Editha J. Dawson conveyed said tract of land by deed of that date and
449 of general warranty deed and running to the Union Mutual Life Insurance Company of Maine; and whereas, prior to said last-named date, the N. W. 4th of the S. E. 4th of said section had been sold for taxes and assessments for the year 1869; and whereas the said insurance Co. are desirous of selling said tract of land to said Hawley at and for the price of $2,300, and have given to him, the said Hawley, a bond for a quit-claim deed to be by them executed and delivered as in said bond described; and the said insurance Co., Dawson, Webster, and Burr and Hawley, are desirous of setting aside, annulling, [and] cancelling the said tax lien in said land which has now ripened into a tax or treasurer's deed by proceedings to be instituted in the district court for Lancaster county, Nebraska, wherein the said insurance Co. told the plaintiffs, and Walsh and Putnam, defendants, and the said Hawley does not wish in any way to be interested in said proceedings; and the said Webster and Burr are willing, as att'ys-at-law for said Dawson and said insurance company, to undertake to set aside and cancel said tax deed and save the said Hawley harmless from the payment of any costs charged or att'y's fees, interests, or other moneys of whatever description by reason of said legal proceedings on said tax deed, and to also guarantee and warrant to the said Hawley a good and perfect title to said N. W. 4th of S. E. 4th, 19, 10, 7, as against said tax deed or sale or any subsequent or prior taxes paid thereon by said Walsh and Putnam at and for the sum of one hundred and twenty-five dollars, to be paid to said Webster and Burr when the

said district court shall declare said tax sale and deed void: Now, therefore, this agreement witnesseth:

That the said party of the first part, for and in consideration of said sum of $120 to be by said Hawley paid as aforesaid,
450 hereby promise and agree to and with the said Hawley, that they will commence in said court the action hereinbefore spoken of, and to prosecute the same to final judgment; that they will save him harmless from costs aforesaid, and that they jointly and severally guarantee and warrant to the said Hawley a perfect title to said N. W. 4th of the S. E. 4th, said section 19, 10, 7, from and clear of and from all liens of every nature and description whatsoever by reason of said tax deed, and that in the event of not obtaining cancellation of tax title to said land, said Webster and Burr will save the said Hawley harmless from the payment to the said insurance Co. of any and all money he may pay to them in said bond.

L. C. BURR.
J. R. WEBSTER.

Burr on Signatures.

L. C. BURR recalled and examined by AMES:

Q. 1. Is that paper I now produce to you, that of Editha J. Dawson by Burr, in your handwriting?

A. I think it is. I should say that was Mrs. Dawson's name signed by myself, if I am on the witness stand.

AMES: I offer that in evidence.

The paper thus put in evidence, marked Exhibit X, and the following is a copy of the same:

Agreement. Dawson & Lombard.

Articles of agreement this day made and entered into, by and between B. Lombard, Jr., of Galesburg, Illinois, party of the first part, and Editha J. Dawson, of Lincoln, Nebraska, party of the second part, witnesseth: That for consideration hereinafter mentioned the party of the second part hereby agrees to make a good and sufficient warranty deed to the W. half of the S. E. 4th of 19, 10, 7, Lancaster county, Nebraska, to such persons as the party of the first part may direct, and give an approved mortgage on the N. E. 4th of 10, 9, 7, in Lancaster county, Nebraska, for about
451 ($1,500) fifteen hundred dollars, or such exact amount as may be due February 13th, 1877, on her loan number 1141 of $5,000 to the Union Mutual Life Insurance Co., of Maine, after deducting all payments of principal or interest which have from time to time been made, and $3,500, which is consideration for the above-mentioned W. half of S. E. 19, 10, 7, and pay the party of the first part $30 on execution of the proper papers to the foregoing.

In consideration of which the party of the first part hereby agrees to obtain a loan for said party of the second part for amount as above not exactly stated, at the rate of 10 per cent. interest per an-

num, principal payment in 3 years, and liquidate and release all claims held by the aforesaid Union Mu[tual] Life Ins. Co., of Maine and secured by duly recorded mortgages on the above-described real estate in Lancaster Co., Nebraska.

In witness whereof the parties hereto have hereunto set their hands this 1st day of February, A. D. 1877.

B. LOMBARD, JR.,
By J. H. CHASE.
EDITHA J. DAWSON,
By BURR.

Endorsed: Agreement of B. Lombard, Jr., and Editha J. Dawson

L. C. BURR's examination by AMES continued:

Q. 2. Is that letter in your handwriting?

A. Yes, sir.

Q. 3. Who is the man B. Lombard, to whom that is addressed, and what was his business at that time?

A. He was agent for the Union Mutual Life Insurance Company, I believe, of Maine.

AMES: I offer this in evidence.

(Paper received in evidence and marked Exhibit Y, the following being a copy of the same.)

452 *Letter. Burr to Lombard.*

LINCOLN, NEBR., *M'ch 18th*, 1878.

Mr. B. Lombard, Esq., Nebraska City:

DEAR SIR: Yours of 16th before me; contents noted. When I sold the 80 acres spoken of for Mrs. Dawson this tax deed of Walsh — Putnam was spoken of and fully understood by your Mr. Chase. We both examined the deed of record, and I expressly told him that in my opinion the tax deed was absolutely void, for no less than six different reasons, and that Mrs. Dawson would not be held by Walsh and P.

Mr. Webster and myself offered to your Mr. McMurtry to guarantee and warrant the title to this 80 acres for $100, and we will still leave the offer open. But of course I see that Messrs. W. and P. are bothering you and spoiling a sale, etc., yet they are responsible financially, and you could get your damages of them if deed was tendered to them to sign properly. Mrs. D has paid quite a number of such sharks, and only done it through policy; but this tax deed is so awfully bad on its face, and a decision of our supreme court almost in point, the clerk has found the assessor's affidavit and has attached it to the roll, so that the case is not decided as is by your letter suggested.

Yours, L. C. BURR.

Mrs. D. will do anything she can to help you in this, but she does not want to pay anything on this tax deed.

5 *Transcripts of Judgments, Papers* 183 *to* 187.

AMES: I offered five certified transcripts in evidence. We offer in evidence each and all of them.

BURR: We object to each and all of them severally as incompetent, immaterial, and irrelevant, and not properly certified.

453 The following are copies of the five transcripts received in evidence under objection, and marked Exhibit Z:

Be it remembered that at a term of the district court for the second judicial district of the Territory of Nebraska within and for the county of Otoe, begun and held at Nebraska City, in said county, on Tuesday, the first day of June, A. D. 1858—present, Hon. Samuel W. Black, judge; E. Estabrook, U. S. dist. attorney; J. Metcalf, dep. U. S. marshal; W. P. Birchfield, sheriff; Wm. McLennan, district attorney; M. W. Rider, clerk—the following proceedings were had and done on the 7th day of July, 1858, that being a day of said term, to wit:

Assumpsit. Judg't by Default.

June Term, 1858.

CHARLES W. WYATT
vs.
JACOB DAWSON. } No. 110.

Now comes the said plaintiff, by H. C. Hennit, his attorney, and the said defendant, though being called, came not, but makes default. It is therefore considered that the default be entered againt him, and because this suit is founded on instrument of writing the clerk is ordered to assess the damages. It is therefore considered and adjudged that the said plaintiff recover of the said defendant the sum of seven hundred dollars and fifty-two cents for his debt and six dollars and eighty cents for his costs in this suit expended, and that he have execution therefor; and it is further ordered and adjudged that this judgment bear interest at the rate of thirty-six per cent. per annum, that being the rate of interest expressed in the note upon which this suit is founded.

454 THE STATE OF NEBRASKA, }
County of Otoe, } *ss:*

I, W. F. N. Houser, clerk of the district court within and for said county of Otoe and State of Nebrasks, do hereby certify that the foregoing is a compared and perfect copy of the judgment rendered in a certain cause wherein Charles W. Wyatt is plaintiff and Jacob Dawson is defendant, as the same now appears of record in my office in Journal A, at page 319 thereof, of the records of said court; and I do hereby further certify that the sale of real estate made under execution issued on said judgment to the amount of $538 was, at the March term, 1861, of said territorial court, confirmed, as appears of record in Journal C, at pages 47 and 68 and 69 thereof, of

the records of our said court, and that said judgment is entitled to a credit of said amount; and I do hereby further certify that said sum of $538 is the only credit made on said judgment, so far as can be ascertained from the records in my office, and that said judgment is dormant.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at my office, in Nebraska City, in said county of Otoe and State of Nebraska, this 27th day of October, 1882.

[Seal of Otoe County District —.]

W. F. N. HOUSER,
Clerk of the District Court.

Be it remembered that at a term of district court for the second judicial district of the Territory of Nebraska within and for the county of Otoe, begun and held in Nebraska City, in said county, on Tuesday, the first day of June, A. D. 1858—present, Hon.
455 Samuel W. Black, judge; E. Estabrook, U. S. dist. attorney; J. Metcalf, dep. U. S. marshal; W. P. Birchfield, sheriff; William M. C. Lennan, district attorney; Mastin W. Rider, clerk—the following proceedings were had and done on the 9th day of July, 1858, that being a day of said term, to wit:

The following proceedings were had and done on the 9th day of July, 1858, that being a day of said term, to wit:

Appeal by Deft from a Judgement Rendered by Wm. E. Pardee, Probate Judge, Ex-officio Justice of the Peace.

June Term 1858.

GEORGE W. HUGHES
vs.
WM. W. HURST, Principal; JACOB DAWSON, Security. } No. 44.

This cause came up for trial, and on hearing judgment is allowed for plaintiff and against defendant for one hundred dollars and twenty-five cents, with six dollars damages for delay; and it is ordered that this judgment be entered up against the appellant and his surety Jacob Dawson; it is therefore considered and adjudged that the said plaintiff, Geo. H. Hughes, recover of the said defendant, Wm. W. Hurst, and Jacob Dawson, his surety, the sum of one hundred dollars and twenty-five cents for his debt, and six dollars damages for delay, and his costs in this suit expended, as well in this court as in the court below, taxed at ten dollars and sixty-five cents, and that he have execution therefor.

At the bottom of the record of the said judgment the following assignment is written, to wit:

For value received I hereby assign the judgment rendered in my favor in the above cause for one hundred and six dollars and costs, which judgment was rendered on July 9th, 1858, against said defend-

ant to Harding and Blackman, and authorize them to collect
456 and have all the profits of same, the same as myself.
Witness my hand this 17th day of February, A. D. 1860.
(Signed) G. H HUGHES.

I hereby certify the above to be a true copy of original assignment made by Geo. H. Hughes.

ALLEN BLACKER, *Clerk.*

THE STATE OF NEBRASKA, } ss:
County of Otoe, }

I, W. F. N. Houser, clerk of the district court within and for said county of Otoe and State of Nebraska, do hereby certify that the foregoing is a compared and perfect copy of the judgment rendered in a certain cause wherein George H. Hughes is plaintiff and Wm. W. Hurst and Jacob Dawson are defendants, together with all the endorsements thereon, as the same now appears of record in my office in Journal A, at page 334 thereof, of the records of said court; and I do hereby further certify that so far as can be ascertained from the records in my office said judgment is wholly unpaid and unsatisfied and is dormant; and I do further certify that the costs and accrued costs amount to the sum of $18.80.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at my office, in Nebraska City, in said county of Otoe and State of Nebraska, this 27th day of October, A. D. 1882.

[Seal Otoe County District Court.]

W. F. N. HOUSER,
Clerk of the District Court.

Be it remembered that at a term of the district court of the second judicial district of the Territory of Nebraska within and for the county of Otoe, begun and held at Nebraska City, in said county Monday, the fifth day of December, anno Domini one thousand eight hundred and fifty-nine—present, Hon. Joseph Miller, judge;
457 Wm. McLennen, dist. attorney; H. Z. Luddington, dep. U. S. mar.; Wm. P. Birchfield, sheriff of Otoe Co.; Allen Blacker, clerk—the following proceedings were had and done on the 16th day of January, 1860, that being a day of said term, to wit:

THOMAS MORTON & CO. *vs.* JACOB DAWSON and WM. W. HURST.

$87.05.

This cause came on to be heard upon the petition and the evidence, and the defendants having failed to appear, answer, or demur the court doth find that there is due to the said plaintiff from the said defendant, Jacob Dawson, the sum of eighty-seven dollars and five cents, and that the said Wm. W. Hurst was surety on the appeal bond, and is liable as such.

It is ordered and adjudged that the said plaintiff recover of the said Jacob Dawson, principal, and Wm. W. Hurst, as surety as aforesaid, for the sum of eighty-seven dollars and five cents and the costs

of this suit, taxed at —— dollars and —— cents, and that execution issue therefor.

The following assignment of said judgment appears on the margin of the record of the same, to wit:

I hereby assign all my right, title, and interest to William McLennen in this judgment, wherein I am plaintiff and Dawson and Hurst are defendants, for a valuable consideration, this 3rd day of June, A. D. 1861.

THOMAS MORTON & CO.,
By H. H. HARDING, *Their Att'y.*

THE STATE OF NEBRASKA, } ss.
County of Otoe, }

I, W. F. N. Houser, clerk of the district court within and for said county of Otoe and State of Nebraska, do hereby certify that the foregoing is a compared and perfect copy of the judgment
458 rendered in a certain cause wherein Thomas Morton & Co. are plaintiffs and Jacob Dawson and Wm. W. Hurst are defendants, together with all the endorsements thereon, as the same now appears of record in my office in Journal B, at page 135 thereof, of the records of said court; and I hereby further certify that said judgment, so far as can be ascertained from the records in my office, is wholly unsatisfied and is dormant.

In testimony whereof I have hereunto set my hand [and] affixed the seal of our said court at my office in Nebraska City, in said county of Otoe and State of Nebraska, this 26th day of October, A. D. 1882.

[Seal of Otoe County District Court.]

W. F. N. HOUSER,
Clerk of the District Court.

Be it remembered that at a term of the district court of the second judicial district of the Territory of Nebraska within and for the county of Otoe, begun and held at Nebraska City, in said county, on Monday, the fifth day of December, anno Domini one thousand eight hundred and fifty-nine—present, Hon. Joseph Miller, judge; William McLennen, dist. att'y; H. Z. Luddington, dep. U. S. marsh.; Wm. P. Birchfield, sheriff of Otoe county; Allen Blacker, clerk—the following proceedings were had and done on the 30th day of January, 1860, that being a day of said term, to wit:

THOMAS MORTON & CO. *vs.* JACOB DAWSON; WM. HURST, Surety.

Now, on this day, this cause came up for hearing. Said defendant, Jacob Dawson, demanded a jury herein, and it appearing
459 to the court that said defendant had never filed an answer herein and that said defendant did not claim to have any valid defense to said action, his demand for a jury is hereby overruled, and said cause coming up for hearing on its merits, and the court having heard and considered the evidence herein, does hereby find and adjudge that the said plaintiffs recover from the said defendants,

Jacob Dawson and William W. Hurst, security on the appeal bond herein, the sum of eighty-six dollars and fifteen cents, with his costs herein expended, and that he have execution therefor according to the laws in force on April 7th, 1858, that being a date of note on which said suit is founded.

The following assignment appears on the margin of said judgment, to wit:

For value received we hereby assign the within judgment to Wm. McLennen.

THOMAS MORTON & CO.
By H. H. HARDING, *Att'y.*

And the following assignment is written across the face of said judgment, to wit:

I assign this judgment to D. J. McCann for value received without recourse on me.
April 12, 1864.

W. McLENNEN.

THE STATE OF NEBRASKA, } ss:
County of Otoe, }

I, W. F. N. Houser, clerk of the district court within and for said county of Otoe and State of Nebraska, do hereby certify that the foregoing is a compared and perfect copy of the judgment rendered in a certain cause wherein Thomas Morton and Co. are plaintiffs, and Jacob Dawson and Wm. W. Hurst are defendants, together with all endorsements thereon as the same now appears of record in my office in Journal B, at page 177 thereof, of the records of said
460 court; and I do hereby further certify that said judgment, so far as can be ascertained from the records in my office, is wholly unsatisfied and dormant.

In testimony whereof I hereunto set my hand and affix the seal of our said court at my office in Nebraska City, in said county of Otoe and State of Nebraska, this 26th day of October, A. D. 1882.

[Seal of Otoe County Court.]

W. F. N. HOUSER,
Clerk of the District Court.

Be it remembered that at a term of the district court of the second judicial district of the Territory of Nebraska within and for the county of Otoe, begun and held at Nebraska City, in said county, on Monday, the fifth day of December, anno Domini one thousand eight hundred and fifty-nine—present, Hon. Joseph Miller, judge; William McLennen, district attorney; H. Z. Luddington, dep. U. S. mar.; Wm. P. Birchfield, sheriff of Otoe Co.; Allen Blacker, clerk—the following proceedings were had and done on the 13th day of January, 1860, that being a day of said term, to wit:

HALL & BAKER
vs.
JACOB DAWSON. } No. 162. $167.00.

This cause came on to be heard on the petition, answer, the evidence, and the arguments of counsel, and was submitted to the court; and the court, being fully advised in the premises, doth find that there is due from the said defendant to the said plaintiff the sum of one hundred and sixty-seven dollars. It is ordered and adjudged that the said plaintiffs recover of the said defendant the sum
461 of one hundred and sixty-seven dollars and the costs of this suit, taxed at — dollars and — cents, and that execution issue therefor.

STATE OF NEBRASKA, }
County of Otoe, } *ss:*

I, W. F. N. Houser, clerk of the district court within and for said county of Otoe and State of Nebraska, do hereby certify that the foregoing is a compared and perfect copy of the judgment rendered in a certain cause wherein Hall and Baker are plaintiffs and Jacob Dawson is defendant as the same now appears of record in my office in Journal B, at page 119 thereof, of the records of said court; and I do hereby further certify that said judgment, so far as can be ascertained from the records in my office, is wholly unsatisfied and is dormant.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at my office in Nebraska City, in said county of Otoe and State of Nebraska, this 26th day of October, A. D. 1882.

[Seal of Otoe County District Court.]

W. F. N. HOUSER,
Clerk of the District Court.

McManigal as to South Lincoln Property.

JOHN MCMANIGAL sworn and examined by AMES:

Q. 1. Where do you live?
A. Lincoln, Nebraska.
Q. 2. How long have you lived there?
A. 12 or 13 years.
Q. 3. Are you acquainted with Mr. L. C. Burr?
A. Yes, sir.
Q. 4. How long have you known him?
A. Well, I do not know as I could answer correctly as to the number of years I have known Mr. Burr. I suppose ever since he has been here.
Q. 5. Do you know the property adjoining the city of Lincoln on the south, known as Dawson's addition to South Lincoln?
A. Yes, sir.
Q. 6. Did you ever buy any of it?

A. I do not know as I could remember all of the lots that I purchased there—there is some of them that I remember.

462 Q. 7. Which of them can you remember?

A. Lots 7, 8, 9, and 10, in block 38, and I think lots 11 and 12, in 3; that is my recollection.

Q. 8. Of whom did you purchase them?

A. Well, I purchased them from Mrs. Dawson.

Q. 9. Through the intervention of any agent on her part?

A. Yes, sir; Mr. L. C. Burr.

Q. 10. Do you remember when?

A. It was in '78, I think; I could not give the date.

Q. 11. Did you have any conversation with Mr. Burr about the title at the time of that negotiation or purchase?

A. Nothing further than I asked Mr. Burr, as I most always ask any person of whom I may buy property, if the title was all right.

Q. 12. What did he say?

A. My recollection is that he said that it was, with the exception, perhaps, of some unpaid taxes; I think I bought some of the lots subject to some back taxes; that is my recollection.

Cross-examined by WOOLWORTH:

Q. 13. How did you buy the lots?

A. I say I did buy some lots that there were some unpaid taxes on, and I agreed to pay the back taxes.

Examination-in-chief resumed:

Q. 14. Was the conversation you had before you paid the purchase price or after it?

A. Before.

Q. 15. Did you believe what he told you?

A. Yes.

Q. 16. Was anything said about the chain of title and the number of conveyances back of this?

A. Well, my recollection is that Mr. Burr [re]presented to me that it came direct from Mrs. ——; there was no transfer; it came direct from Mrs. Dawson.

463 Cross-examined by BURR:

Q. 17. Did you, in buying any of this property, rely upon any of the statements that L. C. Burr made to you for your title?

A. Well, yes; I did to the extent of not getting an abstract I usually — in buying property.

Q. 18. What has been your business in Lincoln for ten years past?

A. Well, I have been engaged in the real estate business for the last four or five years.

Q. 19. Handling and dealing in real estate?

A. Yes, a good portion of the time.

Q. 20. Are you in the habit of taking the statements of agents — persons for the title?

A. I do sometimes and sometimes I do not.

Q. 21. You do not go to the records in your business dealings and find out yourself about the title?

A. Very often I do.

Q. 22. What did you do in this case when you bought these lots?

A. I do not remember whether I looked at the records to see; I think I did. I think I looked at the records to see whether they had been transferred from Mrs. Dawson to some person else.

Q. 23. Did you ask Burr to look up the title to these lots?

A. No.

Q. 24. And give you an opinion on it?

A. No, sir.

Q. 25. Did not hire him to do it and pay him for it?

A. No, sir.

Q. 26. You paid how much apiece for these lots?

A. I do not know that I could tell you; I do not remember.

Q. 27. Did you pay to exceed $10 a lot?

A. Well, some lots I bought for $10 a lot and some I paid, I think, $15. Well I cannot remember the price; I won't say positive as to that.

464 Q. 28. It was not of consequence enough to look it up—is that the idea?

A. Well; I believe I have already stated that I looked to see if there was any transfer on the record from Mrs. Dawson.

Q. 29. You found it just as Mr. Burr said—that there had been no transfers from Mrs. Dawson on the record; she had it and you bought on that?

A. I believe there had been no transfer from Mrs. Dawson.

Q. 30. That is what Burr told you—said that you would find that Mrs. Dawson had made no transfers on them?

A. No; my recollection is that Mr. Burr told me that the title was all right except some back taxes, perhaps.

Q. 31. If you went and looked at the title yourself, and then heard Burr say the title was all right (and you had examined the records on purchasing this property), did you rely on what Burr said or what you had seen on the record?

A. Well; on both I only examined the numerical index; I did not look at any other records than the numerical index of our county records.

Q. 32. You are not a party to this action, are you?

A. No, sir; not that I know of.

Q. 33. Did you convey these premises by warranty deed?

A. Yes, sir.

Q. 34. You might be liable then upon your warranty for the premises?

A. I presume so; I suppose I am.

Q. 35. You would not swear, would you; it is simply your recollection—it is only your recollection—that Burr simply said that the title was all right?

A. Well; that is my recollection, the best of my recollection.

Witness excused.

465 WILLIAM MCLAUGHLIN sworn and examined by AMES:

Q. 1. Where do you reside?
A. Lincoln, Nebraska.
Q. 2. How long have you lived here?
A. I have lived here permanently since '69.
Q. 3. Are you acquainted with Mr. L. C. Burr?
A. Yes, sir.
Q. 4. How long have you known him?
A. I have known Mr. Burr since he came to Lincoln, but I cannot tell the number of years.
Q. 5. Are you acquainted with the property adjoining Lincoln on the south, known as Dawson's addition to South Lincoln?
A. Yes, sir.
Q. 6. Did you ever buy any of it?
A. Yes, sir.
Q. 7. What portion of it, if you remember?
A. I bought three lots in block 130, I think. My recollection is they were 10, 11, and 12, though I may be mistaken, and I bought three more lots—I took them of a Mr. Graham, who bought them at auction and backed out, and I took them off his hands.
Q. 8. Do you remember when that was?
A. I could not tell you the year; I remember the time, but not the year.
Q. 9. Was there an auction being held at that time?
A. Yes.
Q. 10. Of this property?
A. Yes.
Q. 11. Did you have any conversation at the time of that purchase with reference to the title?
A. I believe the only conversation with Mr. Burr—Mr. Burr made a statement on the ground the day I bought before the auction commenced that the title was all right.

WOOLWORTH:

Q. 12. Were you at the sale?
A. Yes, sir.
Q. 13. You heard him make the statement?
A. Yes; I asked Mr. Burr if he was willing. I am particular in buying, because I like to buy something clear. I
466 asked Mr. Burr if he would make an abstract of title, and he said he would.
Q. 14. Did you believe what Burr told you?
A. Yes, I did; I supposed the property was all right.
Q. 15. Paid for the lots, did you?
A. Yes.
Q. 16. Who did you pay the money to?
A. To Mr. Burr, I believe.

Cross-examined by BURR:

Q. 17. Do you know when it was the sale took place?

A. I do not remember the exact date or the year.

Q. 18. What do you say that Burr said?

A. Well, my recolleceion was this: At the time that you represented the property all clear, with the exception of some taxes that you said you would pay—the back taxes, I believe.

Q. 19. Where did the sale commence?

A. In South Lincoln.

Q. 20. Did the sale begin there?

A. Well, the day that I bought the sale commenced that day there; I do not know where it commenced before.

Q. 21. The day that you bought it commenced in South Lincoln, did it?

A. I could not tell where it began; I bought the lots in South Lincoln; Mr. Rossiter was the auctioneer.

Q. 22. He was the auctioneer of these lots; was I present?

A. Yes; you were around there.

Q. 23. Did you see me in South Lincoln during that sale?

A. I think I did.

Q. 24. Did not your conversation with me occur in my office?

A. When I went to pay the money to you in your office you had the abstract of title ready for me, but the understanding with you down in South Lincoln was you would give me an abstract of title.

Q. 25. Did I give you an abstract of title?

467 A. Yes, sir; I think I had——

Q. 26. Did I give you it or did you get [it] yourself or Doc. Yeazel?

A. As to that I could not say; I know you furnished me with abstract of title; I could not say whether you gave it [to] me yourself.

Q. 27. Do you say I paid for it?

A. I do not know who paid for it; I did not pay for it.

Q. 28. Was you present at the sale of the lots in Capital addition?

A. I could not positively say whether I was or not; I might have been or might not. There was several days of this auction.

Q. 29. Was you present there at the time?

A. I could not tell you; I could not say.

Q. 30. Did you ask me any question down in South Lincoln, do you think?

A. I think my recollection is I asked you if you was willing to furnish an abstract of title, and you said you would.

Q. 31. Was that all you asked me, and all you heard me say?

A. I could not tell you what the conversation was, but I was naturally inclined to find out something about the title; but my understanding, my recollection, is that you represented the title as being all right.

Q. 32. You would not say that as a fact?

A. Well, I would not; that is my recollection of it; I would not be positive about it, but I am inclined to——

Q. 33. Did you go to Thomas Cantlon, a lawyer that was here then, to get advice from him as to the title to this land?

A. I have no recollection about that; Mr. Cantlon and I was not on very good terms.

Q. 34. Did you go to any person?

A. No, sir.

468. Re-examined by AMES:

Q. 35. You say this was an auction—were many persons at the auction?

A. There were a good many.

Q. 36. Rossiter was auctioneer?

A. My recollection is Rossiter was auctioneer.

Q. 37. Was there a brass band of music there?

A. I could not positively say whether there was a band there.

Q. 38. Do you know who was the clerk and kept the accounts of the sale?

A. I do not know; think Mr. Burr kept the paper.

Q. 39. Do you know William R. Dawson?

WITNESS: Mrs. Dawson's son?

AMES: Yes.

A. Yes, sir.

Q. 40. Do you know whether he was there?

A. I could not say at that time or not.

Witness excused.

Hathaway Publication of Av'd.

H. D. HATHAWAY sworn and examined by HALL:

Q. 1. What was your business in 1874 and '5?

A. I was manager of "The State Journal" company, and one of the publishers of "The Nebraska State Journal."

Q. 2. By whom was the Nebraska State Journal published in '74 and '75?

A. Published by C. H. Gere and myself.

Q. 3. (A copy of the Daily State Journal of the date Sunday morning, November 14, 1875, was here produced and exhibited to witness.) Was that advertisement published in the Daily State Journal? (Pointing to a part of the paper exhibited.)

A. It was.

Q. 4. State, if you know, about how long that advertisement was published in the Daily State Journal, and about the date when it was first published, if you can, and about how long that advertisement was kept running in the paper?

BURR: Objected [as] incompetent, immaterial, and irrelevant.

469 A. It was published there about the 10th of November, '74 to about the 3rd of December, '75.

Q. 5. You may state who paid for that advertisement and to whom it was charged on your books.

Burr objected [as] incompetent, immaterial, and irrelevant.

A. It was charged to L. C. Burr—our books show.

Q. 5. Was it ever paid for?
A. It was paid by the showing of our books. I have no personal recollection of it — by L. C. Burr.

WOOLWORTH: I object to witness stating what was in the books; it is not the best evidence.

Q. 6. You may state, if you know, in whose name the account for that publication was made out.

Woolworth objected [as] not the best evidence.

Q. 7. You say you were the business manager at that time?
A. Yes, sir.
Q. 8. Go ahead and tell.
A. No doubt it was made out in the name of L. C. Burr.

Witness excused.

HALL: We now offer in evidence this issue of the "State Journal," that part containing the advertisement headed the "Dawson property for sale," and signed "L. C. Burr."

Burr objected [as] incompetent, irrelevant, and immaterial.

The following is a copy of the part of the newspaper thus put in evidence and marked "Exhibit A 1:"

Adv't. in State Journal.

Dawson property for sale.

A rare opportunity for investment. A large number of lots for sale in various parts of Lincoln at one-half their market value. Buy immediately if you want to make some money.
Inquire of— LIONEL C. BURR,
nov9-eodtf Office in Academy of Music, Lincoln, Neb.

470 *Burr, A. D., as to Purchase in South Lincoln.*

A. D. BURR sworn and examined by AMES:

Q. 1. Where do you reside?
A. Lincoln, Nebraska.
Q. 2. How long have you resided here?
A. Since the spring of '74.
Q. 3. Mr. L. C. Burr is your brother?
A. Yes, sir.
Q. 4. Are you acquainted with A. C. Huestis, of Fort Wayne, Indiana?
A. Yes, sir.
Q. 5. And with Charles D. C. Huestis?
A. I am not acquainted with him.
Q. 6. Know who he is?
A. My impression is he may be a son; I do not know; he may be a brother.

Q. 7. Do you know the property adjoining Lincoln on the south known as Dawson's addition to South Lincoln?

A. Yes, sir.

Q. 8. In the spring of '75, as the agent of Mr. A. C. Huestis, did you negotiate the purchase of a portion of the property?

A. It was along in February.

Q. 9. The early part of '75?

A. Yes.

Q. 10. From whom did you purchase it?

A. Mrs. Dawson.

Q. 11. With whom did you negotiate this purchase?

A. Well, I think with L. C. and one of the Dawsons.

Q. 12. One of the Dawson boys?

A. I think one of the Dawson boys was up in the office.

Q. 13. Do you know which one?

A. I do not know, but I am pretty sure one of them was there.

Q. 14. You did not know them at that time?

A. Well, now—well, I knew two or three of them; two, anyway; but I do not know which was there. There was Albert Dawson, and I have forgotten the other ones' names.

Q. 15. What portion of this property did you purchase?

A. Through your kindness I will refresh my memory. (Looking at a paper.) It was all of block 37; lots 1, 2, 3, 4, 5, 6, 7,
471 8, 9, 10, 11, and 12; lots 5, 6, 7, and 8, being the west half of block 36; lots 1, 2, 3, and 4, being the east half of block 35. I think that was all the lots in the property.

Q. 16. All you remember?

A. Yes; and I see here it is deeded; I suppose that was about all.

Q. 17. You did not have any direct trade or negotiation with Mrs. Dawson, did you or not?

Burr objected [as] incompetent, immaterial, and irrelevant; and nothing in the issues joined here to permit the introduction of such testimony.

Q. 18. Did you have any negotiations with any one excepting L. C. Burr with regard to this purchase on the part of Mrs. Dawson, and perhaps this young man Dawson, to the best of your recollection?

A. I think that they took the deed up to Mrs. Dawson; in fact I did not have no talk with her about it; they took the deed to her and brought it down to me.

Q. 19. What did you do with it?

Burr objected [as] incompetent, immaterial, and irrelevant under the issues joined.

A. I had it recorded.

Q. 20. Did you do anything with it afterwards?

A. Well, I think I mailed it to A. C. Huestis, Fort Wayne.

Q. 21. Do you know whose handwriting that letter is?

(Paper exhibited to witness.)

A. That is L. C. Burr's.

AMES: I offer that in evidence.

BURR: We object [as] incompetent, immaterial, and irrelevant; there being nothing in the issues joined that permits the introduction of such evidence.

The following is a copy of the paper, marked "Exhibit A 2," and put in evidence under objection:

472 *Letter to Huestis, South Lincoln.*

Office in Walsh & Putnam's block, upstairs. Office of Lionel C. Burr, lawyer.

LINCOLN, NEB., *Feb'y* 22*d*, 1875.

A. C. Huestis, Esq.

DEAR SIR: Enclosed find deed and abstract of title for the lots purchased for you, which I hope will reach you safely and all satisfactory. The "Widow Dawson's" property has been managed very badly in the past by a careless attorney, who made considerable money off her, but it is now getting in better shape. She owns considerable real estate, but needs some money to get in perfect shape. In fact everybody needs money here just now, and that's why you got your lots so cheap. The owner of block 39 wants money and would sell for $550 cash. He paid $750. I consider it a bargain; on high ground and good location; broken up and a garden there last season.

The expenses of this transfer are as follows:

Telegraphing		$1 80
Drawing deed		1 50
Extra to county clerk's clerk for promptness		3 00
"Worked Sunday"	$6 30	
Making abstract		3 70
		$10 05

I was allowed a commission on this transaction, nevertheless made a good honest purchase for you and am willing to divide this expense with you. If you send me $5.00 we will call it square. Any time you want to dispose of these lots will find you a purchaser and will guarantee you a liberal percentage; also will keep you posted as to taxes, etc. When you receive deed, etc., let me hear from you, and anything that's not satisfactory will try and make it so.

Yours, very respectfully,

_____.

P. S.—I understand that the seller has to furnish an abstract, and the buyer has to put deed on record, so the actual expenses
473 are only $6.30, and you can dispose of that as you see fit. Charge it all to me or make a divide.

Yours, &c.,

_____.

The 1602 judgment, as the abstractor calls it, is a mechanic's lien enforced against a particular piece of property. She sold that particular piece to Judge A. L. Palmer, who has assumed the payment of said lien, and the mechanics have granted Palmer further time, leaving it stand of record in that shape, but it is not a lien on all her property. Artemius Roberts' judgment is a lien on all the property, but will be paid when the year is exp.

L. C. B.

Examination of A. D. BURR continued:

Q. 22. Do you know that handwriting? (Paper exhibited to witness.)

A. That is L. C. Burr's.

AMES: I offer that also.

BURR: We object [as] incompetent, immaterial, and irrelevant, no issue being joined here that permits the introduction of any such evidence.

The paper was marked "Exhibit A 3," and the following is a copy of the same:

Letter to Huestis.

LINCOLN, NEBRASKA, *March 15th*, 1878.

Mr. A. C. Huestis, Esq., Fort Wayne, Ind.

DEAR SIR: Your letter of March 12th is before me and contents noted. All of these taxes charged upon the city treasurer's book of this city against the premises spoken of are utterly void, null, and of no life whatever, and for that reason have never been paid by Mrs. Dawson, who held and yet holds considerable property under the same charge. If you wish you may write to Hon. T. M. Marquette, or O. P. Mason, or L. W. Billingsley—last-named gentleman is at present in city counsel—any of whom, I am confident,
474 will come to the same conclusion that I have, for this reason:

The premises, taxed as city property, was never within the city limits until last May, 1877, while this is only a small amount, $7.37; yet if Mrs. D. should commence paying she would or might be estopped to say hereafter that she had not recognized or ratified the levy, and consented by this small payment to ratify the act of city assessors in assessing, etc., the whole of South Lincoln as a part of the city of Lincoln. There are a large number of tax buyers here, and would have bought these premises long before this day had they thought that the levy was of any validity. You will see that the county taxes are all paid; that Mrs. Dawson gave you [a] warranty deed. She is in good circumstances yet, and I hereby agree to and with you to pay any of the city taxes spoken of if the same are by law legally assessed and levied.

I have looked for some time to find your letter to me, wherein you sent me money to pay taxes, but can't as yet find it, and from memory cannot say how much you sent me, so I don't know whether you sent me money to pay city taxes or not. If you will give me date of the letter of yours I can find it. Finally, I want to do the square

thing with you, and want you to feel so. The city taxes spoken of are of no account, and Mrs. D. will not pay them voluntarily, and I hope you will act the same way.

Yours respectfully, L. C. BURR.

Examination of A. D. BURR continued by AMES:

Q. 23. Do you hold any office in this county?

A. Clerk of the district court.

Q. 24 How long have you been clerk?

A. Since September, '78.

Q. 25. When did the first term of the court for Lancaster County for 1882 begin; what day?

A. I could not tell you; I have forgotten.

475 Q. 26. You can tell by seeing the card, I suppose? (Exhibiting to witness a paper.)

A. O, yes; that is right; the last day of February—February 28.

BURR: We move to strike out all the testimony of the witness as to his official position and as to the term of the district court of Lancaster as incompetent, immaterial, and irrelevant.

Witness excused.

The parties Ezekiel Giles *et al.* again introduced testimony as follows:

Hiltner. Value of Buildings in Block 54.

M. L. HILTNER sworn and examined by BURR:

Q. 1. How long have you resided in Lincoln?

A. 13 years last August.

Q. 2. What has been your business during that time?

A. Carpenter and builder.

Q. 3. Are you acquainted with the stores occupied by Mr. Redford, Mr. Trickey, Mr. Turner, and Mr. May, the four stores here in controversy?

A. Yes, sir.

Q. 4. Are you acquainted with the value of material for building purposes in this community now?

A. I think so; claim to be.

Q. 5. Have you made a personal and careful estimate of all these four stores?

A. Yes, sir.

Q. 6. Have you itemized your estimate of each store separately?

A. I itemized each part of them.

Q. 7. Is that paper (exhibited to witness) the several items that you made of the store known as the May store?

A. Yes, sir.

Q. 8. Is this the one of Mr. Turner's? (Another paper exhibited to witness.)

A. Yes, sir.

Q. 9. Is this the one occupied by Trickey? (Another paper exhibited.)

A. Yes, sir.

Q. 10. And this the one occupied by Redford? (Another
476 paper exhibited.)

A. Yes, sir.

Q. 11. You may state the different prices that make up the store of Mr. Little, which is the one occupied by Mr. May.

A. Excavation, $156.25; stone work, complete, $510; brick work, $1,019.70; plastering, $237.50; flooring, $650; roofing, $400; doors, $84,50; windows, $156; cornice, $250; store front, $725; cut stone, $250; stairs, $237.50; base, $40.70; partitions, $920; board partition, $12—total, $4,738.35.

LITTLE: [Q.] 12. You do not count the shelving?

A. No; I did not understand that was to come in.

Q. 13. Take the one next to that occupied by Turner and itemize the same.

A. Estimate number 3, occupied by Mr. Turner: Excavation, $91.24; stone work, complete, $333; brick work, $674; plastering, $93; flooring, $285; roofing, $219.10; doors, $110; windows, $100.50; store front, $406; stairs, $7; base, $31; partitions, $26.75—total, $2,530.50.

Q. 14. Take the one occupied by Mr. Trickey.

A. Estimate number 2, occupied by Mr. Trickey: Excavation, $77.50; stone work, $243; brick work, $534.25; plastering, $180; flooring, $140; roofing, $178; ceiling, $88.20; doors, $86.50; windows, $87; store front, $465; stairs, $48.50; base, $36.80; partitions, $38.75; skylight, $9—total, $2,212.50.

Q. 15. Take the one occupied by Mr. Redford.

A. Estimate number 1, occupied by Mr. Redford: Excavation, $106; stone work, complete, $323; brick work, $727; plastering, $233; flooring, $367; roofing, $244; doors, complete, $110.50; windows, $100; skylight, 9; store front, $375; stairs, $32.50; base, $43.40; partitions, $46.50; board partitions, $18.50—total, $2,735.47.

Q. 16. When did you make this itemized estimate of these several buildings?

A. I made it October 11th and 12th, 1882.

477 Q. 17. How did you estimate the value of the buildings, as new work, or as they stand?

A. We have to get the value of the new work, as a general thing, and then the depreciation in value.

Cross-examined by HALL:

Q. 18. How long have you been a carpenter and builder?

A. I started in before the war.

Q. 19. Give the number of years.

A. From 1861 to 1869 I first commenced, and was two years in the army.

Q. 20. What are the dimensions of the building occupied by Mr. May?

A. 80 feet long, one part of it, by 25 feet wide.

Q. 21. How high is it?

A. 31 feet high—that is, the little building.

Q. 22. Your estimate number 4, being the building occupied by May and being the one owned by Little—you estimate the building 80 feet long and 30 feet high.

A. That is part of it.

Q. 23. How much is the addition?

A. 18 feet high, 20 feet long, and 25 feet wide.

Q. 24. What is the estimate of that addition; is that included in this?

A. That is included in that statement.

Q. 25. How long is the basement, what you call excavation?

A. 100 feet.

Q. 26. How long is the excavation in the Redford building—that is, estimate number 1?

A. 88 feet.

Q. 27. How deep is the excavation in estimate number 4?

A. That is hard to get at. We had to determine by what we could see of the ground around the main building—counted 8 feet deep.

Q. 28. What is the excavation's depth?

A. We counted 6 feet and a half.

Q. 29. Did you measure it?

A. Measured it; we concluded they were that.

Q. 30. How much is the stone work higher in excavation
478 number 4 than in excavation number 1?

A. The stone-work in number 4 is 8 feet; the stone work in number 1 is 8 feet and a half.

Q. 31. How many more perch of stone are there in estimate number 4 than in estimate number 1?

BURR: We object to entering into a calculation of this sort as immaterial.

A. 69 more perch.

Q. 32. What are stone worth a perch?

A. Two dollars and a half.

Q. 33. That is in the wall?

A. Yes, sir.

Q. 34. Is there the same material in both foundations?

A. No, sir.

Q. 35. What is the limestone worth?

A. I would not consider there is a great deal of difference between them; they are both good stone.

Q. 36. In what does the difference consist—the difference in the value between estimates number 1 and number 4, if they are of equal durability, and one is only 12 feet longer than the other, and yet takes $200 more?

A. There is more walling in some buildings than in others.

Q. 37. How thick is the wall in estimate number 4?

A. One and a half feet.

Q. 38. How thick is the wall in estimate number one?

A. One and a half feet.

Q. 39. How many perch of stone are there in estimate number 4 in what you call the stone work complete?

A. 204.

Q. 40. And what is it worth a perch?

A. $2.50.

Q. 41. How many perch of stone are there in estimate number 1?

A. 135.

Q. 42. And what are these stone worth a perch?

A. I have not got the figures down here (witness was refreshing his memory by looking at entries on a paper), but I think I counted them the same.

479 Q. 43. How many brick are there in estimate number 4?

A. 101,970 I make it.

Q. 44. And what are they worth a thousand in the wall?

A. I count them $10.

Q. 45. How many yards of plastering are there in that building?

A. I make 950.

Q. 46. What is it worth?

A. Now, I estimate good plastering at twenty-five cents a yard, and I do not know whether I made much deduction or not.

Q. 47. How much deduction did you make?

A. I have not got——

Q. 48. Have you got it?

A. I estimated good plastering at twenty-five cents, and made a reasonable deduction.

Q. 49. What deducted?

A. I do not know whether I have deducted anything there or not, but I could figure it out and see.

Q. 50. How did you make your deductions—just deduct so much from the total after you had found what the building was actually worth; did you deduct so much from the general total?

A. Each separate part. As I done one I figured it up and made a deduction for each item separate.

Q. 51. You do not know how much of a deduction you made on any of these different items in estimate number 4?

A. Yes, sir.

Q. 52. But how did you make the deductions?

A. Yes, sir; I have a book here where I carried out the different deductions. (Producing a book and looking at the same.) On the May building the amount $255 I called it $237.55 on the plastering.

Q. 53. What did you deduct on the excavation?

A. I did not deduct anything.

Q. 53. From the stone?

A. I deducted from $550 to $510.

480 Q. 54. From the brick work?

A. From $1,110 to $1,019.70.

Q. 55. On the plastering?

A. From $250 to $237.50.

Q. 56. On the flooring?

A. From $685 down to $650.

Q. 57. On the roof?

A. From $420 to $400.
Q. 58. On the doors?
A. From $92 to $84.50.
Q. 59. On the windows?
A. From $164 to $156.
Q. 60. On the cornice?
A. Nothing.
Q. 61. On the cut stone?
A. Nothing.
Q. 62. On the stone front?
A. Nothing.
Q. 63. On the stairs?
A. From $253 to $237.50.
Q. 64. On the base?
A. From $46 to $40.70.
Q. 65. Have you made an estimate on every item that enters into a building of this kind?
A. As far as I am able to; I went all through it carefully.
Q. 66. What is the difference in length between the building in estimate No. 1 and estimate No. 2, if any? The one is the Redford building and the other Trickey's.
A. In estimate No. 1 and estimate No. 2—I am mistaken in the excavation. The figures are changed here. I said 88 feet, but it cannot be more than 80 feet, according to the rest of the figures.
Q. 67. Are the buildings in estimates Nos. 1 & 2 the same size and the same length?
A. No, sir.
Q. 68. Which is the deeper?
A. Estimate No. 1 is 80 feet and estimate No. 2 is 60.
Q. 69. How deep is No. 3, Turner's building?
A. 80 feet on the ground.
Q. 70. How much of a deduction did you make on building No. 3; how much did you deduct for wear and tear?
A. The total amount is not figured out.
Q. 71. Give me the several items in estimate No. 3, excavations.
481 A. I deducted nothing from the excavation.
Q. 72. The stone work complete?
A. $350 to $333.
Q. 73. On the brick?
A. From $715 to $674.
Q. 74. On the plastering?
A. plastering from $214 to $193.
Q. 75. On the flooring?
A. Flooring from $316 to $285.
Q. 76. On the roof?
A. The roof from $259 to $219.
Q. 77. On the doors?
A. From $124 to $110.
Q. 78. On the windows?
A. From $109 to $110.56.

Q. 79. On the store front?
A. From $475 to $460.
Q. 80. On the stairs?
A. From $8 to $7.
Q. 81. On the base?
A. $35.43 to $31.
Q. 82. Partitions?
A. No deductions.
Q. 84. You have made no estimate on the shelvings of any of these buildings?
A. No, sir; I was only sent to make an estimate on the buildings.
Q. 85. How much did you deduct from the flooring in No. 3?
A. From $316 to $285.
Q. 86. Do you know that new flooring has been put into that building during the past year?
A. I took into consideration the nature of the floor work at the time I estimated it. I do not know when it was put in.
Q. 87. Is it not a fact that you deducted more from this flooring than from the Little building, where it has been used 3 or 4 years?
A. Yes; maybe.
Q. 88. If you cannot tell from the looks of a floor how long it has been used, how can you tell how much to deduct for its use?
A. That is a pretty hard question to answer.
Q. 89. Is it a fact that the deductions are guessed at then?

WITNESS: Can you tell a piece of land down here how much it is worth for a floor?

Q. 90. Have you not guessed the deductions and thown off
482 so much—how much had the floor been used in No. 3?
A. I hav to use my judgment as to the wear and tear of them. I can get no nearer way at them, nor nobody else
Q. 91. Did you examine them specially to see how much they were worn?
A. I did, carefully.
Q. 92. And you throwed off so much?
A. I just throwed off what was wear and tear in the floor.
Q. 93. How much wear and tear in the stone work in number 3?
A. $350 to $333.
Q. 94. That is wear and tear in the stone work?
A. Yes; that is the difference between that wall and a new wall put in there at this time.
Q. 95. How much did you deduct from the brick in estimate number 4?
A. From $1,110 to $1,019.70.
Q. 96. How much did you deduct from the brick work in estimate number 3?
A. From $715 to $674.
Q. 97. Do you know how much longer the Turner building has been in use than the May building has?
A. About 6 years I should say—5 or 6 years.

Q. 98. The Turner building has been used 5 or six years longer than the May building?

A. I believe so.

Q. 99. Yet you deduct more from the May building than the one that has been used the longest. Do you know how long the May building has been used?

A. I do not exactly—about 4 years.

Q. 100. And the other has been used about 10 years?

A. I guess it has—10 or 11.

Q. 101. And yet you make the biggest deduction from the one that has been used the shortest length of time. Is that about
483 the basis on which you have made all of your deductions; is that about the line of deductions you have followed?

A. There is no particular rule to go by; I might have deducted some other things—in that particular item. If my judgment is wrong on that thing that is all I can do. If I have judged wrong——

Q. 102. What was the deduction on the floor there?

A. From $316 to $285.

Q. 103. What deduction did you make from the flooring in number 4?

A. From $685 to $650.

Q. 104. Do you know how long the flooring in number 3 has been used; could you tell by looking at it?

A. No; I could not tell by looking at it.

Q. 105. Could you tell the May building?

A. No, sir; it may wear out in one year just as bad as it would in 5 or 10; it depends on how it is used; sometimes one is used a great deal more in the time than another.

Re-examined by BURR:

Q. 106. As I understand from your evidence, you have made an actual measurement of the various parts of these different buildings and found their present value, and then you have deducted from that what, in your judgment, the wear and tear would be?

A. Yes.

Q. 107. To make the actual present costs of the buildings as they now stand; am I right?

A. Yes.

Witness excused.

Burr's Relations with Dawson & Dawson's Estate.

L. C. BURR recalled and examined by WOOLWORTH:

Q. 1. Did you know that Widow Dawson contemplated marriage with Pickering before the marriage occurred?

A. No, sir; I think not.

484 Q. 2. How long after the marriage did you know of it?

A. They moved from here before. She was married in Cass county—they were married there, and I learned of it a short time after they were married.

Q. 3. Have you looked at the deeds introduced in evidence by the plaintiffs, Little and others, of lots in South Lincoln which you executed as the attorney-in-fact of Mrs. Dawson?

A. Well, I never executed any deeds as her attorney-in-fact, and I never was her attorney-in-fact, but there was a lot with my name —. I was a notary public and took the acknowledgment of her deeds, and they have introduced every deed, I suppose, that is of record where my name appears as a notary public, and that is all I ever had to do with a good many of these sales, which was simply to take her acknowledgment.

Q. 4. Had you anything to do with the sale of any other lots than those shown by those deeds?

A. No, sir; I have not.

Q. 5. Recalling your attention to the sale of lots in Capital addition and Dawson's addition to South Lincoln, were you present at either of the sales of these lots at auction?

A. I am quite positive, from my recollection, that when they commenced to make these sales I went up to Capital addition, where they commenced to make these sales, and after they got started I left the premises and came to my office. I had nothing to do with it further than that. The sale at South Lincoln was at a different time and a different sale, and I was not present.

Q. 6. Who did Hawley buy the land of that he has spoken of in his direct testimony?

485 A. Hawley bought the land of Cornelius H. Van Gasbeck, trustee for the Mutual Life Insurance Company of Maine.

Q. 7. Who did that company get its title from?

A. Mrs. Dawson had executed a mortgage to the land to the Union Mutual Life Insurance Company. She was unable to pay it—pay the mortgage—pay her note; and she conveyed this land to Harding, trustee for the company, and Harding conveyed to Van Gasbeck, trustee.

Q. 8. They represented the insurance company, did they?

A. Yes, sir, both of them; they both held the land in trust for the Co.

Q. 9. Did you bring a lawsuit for either of them with regard to this property?

A. Yes, sir.

Q. 10. Who did you bring it in the name of?

A. I hold in my hand the entries in Webster & Burr's book of cases that they had at that time; and I brought that case, or we did, on April 17, '78. The petition and precipe and verification was filed in the name of Cornelius H. Van Gasbeck, Jun., trustee for the Union Mutual Life Insurance Company of Maine, against Homan J. Walsh and Israel Putnam for the cancellation of the tax lien or the tax deed.

Q. 11. What connection had Hawley with that litigation?

A. My recollections are that some time after that suit was begun for Van Gasbeck, trustee, he had some negotiations about the same land with Mr. Hawley, and Mr. Hawley and Mr. Rood, the agent of the insurance company, or Van Gasbeck, came to my office and

asked me about it while the litigation was pending; and it was finally agreed between all of us that Hawley should be substituted as party plaintiff for the cancellation of this tax deed, and
486 substitute his name in the place of Van Gasbeck, which was done, and we cancelled the tax deed for Mr. Hawley, as the written memorandum put in evidence here shows.

Q. 12. Then the suit was prosecuted in the name of Hawley to final decree?

A. Yes, sir.

Q. 13. What advice did you give Hawley with respect to the tax title?

A. I told him that in my judgment the tax title was void and — no effect and no lien upon the land.

Q. 14. State what further advice you gave him in reference to the title.

A. Nothing was said about the title in general at all. The only thing mentioned or talked about here was whether or not the tax deed was a lien or whether Walsh & Putnam was the owners of the land under that deed—nothing talked of but the tax title.

Q. 15. What, professionally, did you have to do with Van Dorn?

A. Never had anything.

Q. 16. State whether or not he employed you professionally to examine the title to the land of which he has spoken?

A. No, sir, he did not—never; I never was employed by Van Dorn or by any one through him—for him.

Q. 17. State what representations you made to Van Dorn, as far as you remember, with reference to the title to the property he bought.

A. Mr. Van Dorn came to me and told me he had just come from a visit to Mrs. Dawson, and he was wanting to buy of her this 40 acres of land, and that Mrs. Dawson had told him to come down to me — draw the deed. I know that I never made the sale to Van Dorn; if I had I would have charged Mrs. Dawson a commission for it.

Q. 18. How do you know you did not do it?

A. Because I never charged her one cent commission for
487 it; I simply charged Mrs. Dawson $2.50 for that transaction— for drawing the deed. If I had made a trade I would have charged Mrs. Dawson a commission of 3 to 5 per cent. of the amount of the sale.

Q. 19. What did you say to him, if anything, about the title?

A. I cannot recollect of ever saying anything about the title at all. The title was not spoken of between him and me, so far as I can remember. I think I told him this, that he could go to Mr. Doc. Yeazel, who was in Cobb, Marquett & Moore's office, and get an abstract from him if he wanted to; I know that at that time I was in the habit of telling that to every one that had anything to do. I did not get up abstracts myself, did not have time to attend to it, and never did, I told them. It was understood between Yeazel and me —he had spoken to me about it—that I would refer parties to Yeazel to get abstracts—whether he or not I cannot remember.

Q. 20. Do you remember that abstract yourself?

A. No, sir; I do not.

Q. 21. Did you have anything to do with getting it?

A. No.

Q. 22. Did you see it after it was got?

A. I do not think I did; I have no recollection of it; if I did I think I could remember it.

Q. 23. Did you say anything to Van Dorn about the will, and the construction, and the title Mrs. Dawson took under the will?

A. No; it was not talked between him and I and no other person about the Dawson will, or its contents, because at that time I knew nothing of the Dawson will, never seen it, never read it, knew nothing of its contents until the Shaberg deed was given by all the Dawson heirs.

488 Q. 24. When was that?

A. September 12th, 1878. I never heard the Dawson will questioned—the title to this property from the will questioned—one way or the other.

Q. 25. How did you come to examine the will at that particular time?

A. Herman Shaberg came to me and wanted to know if I would go and see the Dawson children and get them to execute a deed to him. I asked him what he wanted a deed from the children for. He said he did not know, but a lawyer had told him that the will was such that he would prefer it. I talked with William Dawson about such a deed for Shaberg. He came to me a second time. I had neglected, and I went and looked at the will, and I saw the reason why this person should desire a quit-claim deed.

Q. 26. Had you ever seen the will before?

A. No, sir; I had not.

Q. 27. Or the record of it?

A. No, sir; I am positive I had never seen or knew—never had seen the Dawson will, or heard anything about it until about that time.

Q. 28. Did you see the record of it before that time?

A. No, sir; I never saw the record of it, and never knew anything about it.

Q. 29. State whether or not, when you conveyed to Giles, or any time before that, you told him anything about your dealings with the Dawsons in respect to this property—Mrs. Dawson or any of the children.

Ames objected [as] irrelevant and immaterial.

[*Q. 30.*] A. No, sir; the sale of these premises to Mr. Giles was made by writing—by letters. I never wrote to him anything about my dealings or my conduct towards the heirs, or any of them.

489 Q. 31. What did he know about that?

Ames objected [as] irrelevant and immaterial.

A. He did not know anything about it.

Q 32. Do you remember the occasion that Chipman has testified to of the purchase by him of some of these lots in South Lincoln?

A. I have a very indistinct recollection of Mr. Chipman coming to my office and having an assignment of the contract made in the Mrs. Terwillinger matter.

Q. 33. What did you say to him, if anything, with reference to the title which Mrs. Dawson would convey?

A. I do not believe I told him anything about it. I do not think it was ever asked of me, or that I ever said anything about it.

Q. 34. Did you say to him anything with reference to her having the fee or only a life estate in this land?

A. No, sir; nothing was said.

Q. 35. Was anything said about the extent of title she had or could convey?

A. No; it was not spoken of between us at all.

Q. 36. Anything said about the will?

A. No, sir; I know nothing was said about the will, because it was not questioned by anybody in this community till the latter part of the year 1878; no one questioned or talked about it to my knowledge.

Q. 37. Do you know when McManigal bought some lots in the same subdivisions?

A. Yes, sir. I think most of the titles McManigal has is quit-claim deeds from Mrs. Dawson. She sold them so cheap she would not give them a warranty deed.

Q. 39. What did you say to him about the title in Mrs. Dawson?

A. I did not say anything to him about the title at all. He
490 is a man that does his business himself without asking questions. He is a real estate dealer and he looked up his own title without asking me about it at all except asking about the money.

Q. 40. Do you recollect how much that was he paid?

A. My recollection is he gave $10 a lot. They are lots in sloughs, low places, worth but little, and he bought them to trade with, so he told me.

Q. 41. Do you remember when McLaughlin bought some lots in the same addition?

A. No, sir; I have only this recollection about McLaughlin, that he came to me about taxes on a certain lot or ground that he had down there. I cannot remember making any sale to him, or having anything to do with him about these lots down there; I have no recollection about it whatever.

Q. 42. Did you have any conversation with him about the nature or extent of Mrs. Dawson's title?

A. I know I never had prior to the bringing of this action; I may have talked with him lately about it.

Q. 43. How lately?

A. Oh, within a year; but I know that prior to the time he purchased his property I know I never talked with him about the Dawson will; never talked with anybody about it; did not know about it myself.

Cross-examined by HALL:

Q. 44. When were you first employed as Mrs. Dawson's attorney?

A. Well, I bought Mr. Galey's law library after I came to Lincoln, I think in the year 1874 or '5, and when I purchased from him his law library, or part of it, he, well, Mrs. Dawson, commenced doing business with me. I might say she was a client of his that he turned over to me. I think this was in '74 or '5.

491 Q. 45. To your best recollection what year was it?

A. I should say in the spring of 1875 as my best recollection. I could tell positively if I had the time to examine some papers and books that I have.

Q. 46. What was the nature of the legal business that you did for Mrs. Dawson?

A. Well, Stout and Jamison had several judgments against her for building the large brick house up there; Artemus Roberts had also a judgment against her. She had in hand some notes that were turned over to me by Galey; these notes I prosecuted to judgment and collected.

Q. 47. Did you not act for her in the capacity of attorney and also of adviser in handling her property—sold it, collected her rents and turned them over to her, doing all her business generally?

A. Well, her sons did a good deal of her business; I did anything they requested me, of course.

Q. 48. Was it not generally understood that her business—what they did—was done under your advice?

A. Hardly that; I never advised the Dawson heirs at all.

Q. 49. I am speaking about Mrs. Dawson. Did not you collect her rents, look after her property, and generally advise her as to the value of it and its disposal?

A. No; I never advised her to sell or not sell property that I know of. Whenever her sons did not collect rents, and some renter was about to defeat them in rents, I would bring an action or something of that kind.

Q. 50. All you did was professional business, in the line of business, such as litigating claims?

A. No.

492 Q. 51. What was it?

A. In order to pay judgments on her property—on what is the Fitzgerald house now—I think I advertised her property for sale, tried to sell any property she owned in order to pay off these judgments, that were liens against her property.

Q. 52. Is it not a fact that you did advertise property for sale, offering special inducements to purchasers, and requesting them to inquire of you with regard to it; is it not a fact that these purchasers did invariably apply to you about this cheap property?

WITNESS: When you say this property I do not know what you mean.

HALL: Say the Dawson addition to South Lincoln.

A. I do not believe I ever offered any of the Dawson addition for sale; I cannot recollect that I ever offered it.

Q. 53. What property do you refer to in this advertisement in this paper that has been introduced?

A. I have not read it; I looked at it to see if my name was in it; I saw my name was to it.

Q. 54. (Reading the advertisement put in evidence): Did any of these parties ever inquire at your office to buy this Dawson property?

A. O, yes; I have sold property for her; she had some land that I sold; she had lots that I sold for her, and I paid off these judgments.

Q. 55. They would pay you the money, and you would turn it over to her?

A. Sometimes they would pay the money to me; but frequently and oftentimes they would pay the money to her.

Q. 56. Did not the parties come to make inquiry about the title to this property?

A. I cannot remember a single person ever asking me about the title.

Q. 57. Can you remember they did not ask you about it?

493 A. I cannot say I can remember a person that did not; I think you did not; I think you took it for granted.

Q. 58. Did I ever buy any of it from you?

A. No; you never did buy any of it of me.

Q. 59. Then you cannot recollect of a single party who ever came to you relative to the purchase of this Dawson property that ever asked you anything about the title?

A. Not prior; I know they did not; I will swear they did not; not prior to the fall of 1878. Since that time, since there has been a question about this will, of course quite a number of persons have asked me what I thought about it. It was brought to my mind very forcibly, this will, by Mr. Shaberg, and I knew the date from this deed.

Re-examined by WOOLWORTH:

Q. 60. These judgments that you speak of, who were they against?

A. Against Mrs. Dawson, Editha J. Dawson.

Q. 61. Individually?

A. Yes, sir.

Q. 62. Not in her representative capacity?

A. No, sir; they were against her alone.

Q. 63. You spoke about the Fitzgerald property. What property is that?

A. That is the fine large residence (brick) up here in Capital addition that Mrs. Dawson built; she and Mr. Galey built at the same time.

Q. 64. When Mr. Jacob Dawson died who owned that property?

A. Mrs. Dawson owned it.

Q. 65. That is the property that has been already spoken of as worth from $15,000 to $18,000?

A. Yes, sir; that is called Capital addition.

Q. 66. What is the correct description of that property; do you remember?

A. I cannot give it; the copy of the patent is here in evidence.

Q. 67. That patent runs to whom?

A. To Editha J. Dawson.

Witness excused.

494 The further taking [of] testimony was adjourned to Monday, November 6th, at 10 a. m., in room No. 7, on the upper floor of the Government building, in Lincoln.

At the time and place stated the taking of evidence was continued, Mr. Hall appearing for the parties Little & o'r's, and Mr. Burr for the parties Giles & o'r's.

Burr offered a paper in evidence.

Hall objected [as] incompetent, immaterial, and not the best evidence.

The following is a copy of the paper, which was marked "Exhibit A 4:"

Affidavit as to Original Papers.

STATE OF NEBRASKA, } ss:
County of Lancaster, }

In the Circuit Court of the United States for the District of Nebraska.
In Equity.

EZEKIEL GILES, Complainant,
vs.
S. W. LITTLE *et al.*, Defendants. } Cross-bill of Giles.

L. C. Burr, being first duly sworn, on his oath says he is one of the att'ys for Giles in this case, and have had possession of the papers of Mr. Giles in this action. Affiant says he has made diligent search for the following original patents and deed or deeds, viz: Patent United States to Editha Jane Dawson, and introduced in evidence here; also deed of Wm. A. J. Goodin to Albert Dawson; that the original are lost, and do not belong to Ezekiel Giles, nor are they within his control nor of his att'ys, or any of them.

L. C. BURR.

Subscribed in my presence and sworn to before me this 4th day of November, 1882.

[NOTARIAL SEAL.] A. C. BEESON,
Notary Public.

Endorsed: Ezekiel Giles *vs.* S. W. Little *et al.* Affidavit of
495 L. C. Burr, J. M. Woolworth, for Giles.

The further taking of testimony in the case was continued until one p. m. of the same day at the same place, when, the parties

being represented by the same counsel as in the forenoon, the following testimony was adduced on the part of S. W. Little & o'rs:

Bax. Sale in South Lincoln.

ADAM BAX sworn and examined by HALL:

Q. 1. Where do you reside?
A. I live in Lincoln, Nebraska.
Q. 2. How long have you lived in Lincoln?
A. 14 years last 16th of July.
Q. 3. Do you know where Dawson's addition to Lincoln is?
A. I guess I do.
Q. 4. Where do you live in Lincoln?
A. I live in Dawson's addition to South Lincoln.
Q. 5. How long have you lived there?
A. I built there in 1870; moved into the house about the middle of September, in 1870.
Q. 6. Have you lived there ever since?
A. I have, with the exception of one year; I rented the house out and was in Germany that year.
Q. 7. What year was that?
A. I left in '71, in April, and came back in '72, in April.
Q. 8. Do you know whether or not there was ever an auction sale of lots in Dawson's addition to South Lincoln?

Burr objected [as] incompetent, irrelevant, and immaterial under the issues joined.

A. Yes; I remember there was an auction sale there once.
Q. 9. Do you know what year that was?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. No, to tell the truth, I could not give the year.
496 Q. 10. Were you present at that time?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. When the sale commenced I was not present; there had been some lots sold already; I was down here in town.
Q. 11. You may state whether or not you heard L. C. Burr say anything in regard to the title to that property that was being sold there at that time.

Burr objected [as] incompetent, irrelevant, and immaterial.

A. To the best of my recollection I did.
Q. 12. Now you may state what was said by Mr. Burr at that time.

Burr objected [as] incompetent, immaterial, and irrelevant.

A. I went to Mr. Burr and made him an offer on all the lots not sold yet, but it was not accepted. I offered about three times the amount they brought. He thought I had better buy them. I thought he meant good by me—I had better buy them and I would get them cheaper. I stayed there awhile, and Mr. Burr spoke to the men and said, "You had better buy these lots, the lots are

bound to be sold." These words I recollect—"the lots are bound to be sold; there is heavy taxes against them, and Mrs. Dawson is bound to sell them." That is just about what he said. In regard to the title he said that Mrs. Dawson's title is good.

Q. 13. You may state whether or not this statement was made publicly to all the bidders and the men who were there.

Burr objected [as] incompetent, immaterial, and irrelevant, and leading.

Q. 14. They heard this?

A. Well, when Mr. Burr said that it was right in front of the house—of my house—perhaps 15 to 20 paces to the northeast of the door; and there was a whole lot of men round; but I could
497 not under no circumstances swear that anybody heard it but me—I could not.

Q. 15. Did you believe what Burr told you about the title of Mrs. Dawson being good?

BURR objected [as] incompetent, immaterial, and irrelevant, and assuming that he bought some property when the witness has testified that he did not buy any.

A. Most assuredly I did believe, because I had bought lots of Mrs. Dawson already, and if I had not believed the title was good I would not have bought them.

Q. 16. Did you bid on any lots at that auction sale?

BURR objected [as] incompetent, immaterial, and irrelevant.

A. I did; I bid on a lot in 7 and I bid on lot 8, and I told them to go right on; but a man was—well, I thought Mr. Burr had by-bidders there and I quit bidding on it, and I got mad and went away.

Q. 17. Did you bid on the property before or after you heard what Burr said about the title?

Burr objected [as] incompetent, immaterial and irrelevant.

A. That was afterwards.

Cross-examined by BURR:

Q. 18. You did not buy any of the property?

A. I did not at that time.

Q. 19. It is your best recollection that you saw me there?

A. Yes, sir.

Q. 20. You may be in error about that—you are not positive about it—it is your best recollection?

A. Well, I think I talked with you there.

Witness excused.

Transcript as to Cause. Hawke vs. *Dawson.*

Hall offered a document in evidence.

BURR: We object to the introduction of this paper claiming to be

a proceeding had and done on the 9th of October, 1869, in a
498 matter wherein Robert Hawke is plaintiff, and John Dawson and others are defendants, upon the ground that it is incompetent, immaterial, and irrelevant, and that the original has not been accounted for. We object to the certificate of the clerk upon the back of the same as incompetent, immaterial, and irrelevant, and certifying to original papers and these doings in the cause when the originals are not accounted for; and that it is not the best evidence of the sale, or of any of the files in said case, or of the amount of costs, dues in said case; that the sheriff's return is the best evidence, and not the clerk's certificate; and that the satisfaction, if any there be, of this matter is the best evidence, and not the clerk's certificate; and that the certificate pretending and and claiming to show what amount [is] still due on this is incompetent and not the best evidence; and that the original files of the sheriff are the best evidence of when the sale was made, and of all the doings of the sale, and upon the confirmation thereof; and we object to the whole of the certificate as not the best evidence, incompetent, immaterial, and irrelevant, and hearsay.

The following is a copy of the paper marked "Exhibit A 5" and put in evidence under objection:

Be it remembered that — a term of the district court of the first judicial district, State of Nebraska, in & for Otoe county, begun and held at the court-house, Nebraska City, Nebraska, on Monday, the twentieth day of September, anno Domini one thousand eight hundred and sixty-nine—present, Hon. O. P. Mason, judge; O. B. Hewett, district attorney; Geo. R. McCallum, clerk, by Guy
499 A. Brown, deputy; Jas. W. Moore, sheriff—the following proceedings were had and done on the 9th day of October, 1869, that being a day of said term, to wit:

ROBERT HAWKE, Plaintiff,
vs.
JOHN DAWSON, WILLIAM R. DAWSON, ALBERT L. DAWSON, EVALINE M. DAWSON, MELITA C. DAWSON, MINNIE L. DAWSON, Minor Heirs-at-Law of JACOB DAWSON, Deceased, and EDITH J. DAWSON.

And now on this day this cause came on to be heard upon the petition of the plaintiff, the answer of W. P. Roberts, Esq., guardian *ad litem* for said minors, and the report of A. J. Hale, special master in this cause, and it appearing to the court that said defendants have been duly notified of the pendency of this suit, by service of summons upon them, and still failing to plead, answer, or demur, are now three times solemnly called in open court, come not, but make default; and it appearing to the court that there is now justly due on said mortgage in said petition described the sum of two thousand and six dollars, it is therefore ordered by the court that said plaintiff have and recover of and from said defendants the said sum of $2,006 and the costs of suit, taxed at — dollars. And it is hereby ordered, adjudged, and decreed by the court that in case the said defendant

fails for ten days from this date to pay said amount so found due, an order issue to the sheriff of Otoe county, commanding him to cause the said lands and tenements in said petition described, to wit, lot No. seven (7), in block number fifty-one (51), in the town of Wyoming, Otoe county, Nebraska, to be appraised, adver-
500 tised, and sold, according to law and the rules and practice of this court, and apply the proceeds arising from said sale to the satisfaction of said mortgage debt and the costs of suit, and bring the balance, if any there be arising from said sale, into this court to abide the further order thereof.

And it is further ordered, adjudged, and decreed by this court that the equity of redemption of said defendants, and of all persons claiming by, through, or under them, and the dower interest of the said Edith J. Dawson in and to said mortgaged premises be forever barred and foreclosed, and that the purchaser or purchasers of said premises at such sale be let into possession of said premises upon production of the usual sheriff's deed therefor and a certified copy of this decree.

THE STATE OF NEBRASKA, }
County of Otoe, } *ss.*:

I, W. F. N. Houser, clerk of the district court within and for said county of Otoe and State of Nebraska, do hereby certify that the foregoing is a compared and perfect copy of the decree rendered in a certain cause wherein Robert Hawke is plaintiff and John Dawson, William R. Dawson, Albert L. Dawson, Evaline M. Dawson, Melita C. Dawson, Minnie L. Dawson, minor heirs-at-law of Jacob Dawson, deceased, and Edith J. Dawson are defendants, as the same now appears of record in my office in Journal G, at pages 108 and 109 thereof, of the records of said court; and I do hereby further certify that the records and files in my office show that said hereinbefore-described mortgaged premises were, in pursuance of said decree, sold at public auction, by the sheriff of said Otoe county, on the 27th day of November, 1869, to the said plaintiff, Robert Hawke, for the sum of $101.00, one hundred and one dollars, and that said sheriff's return shows that after applying the proceeds of said
501 sale to the payment of said mortgage debt there still remained due and owing to said plaintiff the sum of two thousand one hundred and fourteen dollars and ten cents ($2,114.10), and that said sale was at the December term, 1869, of said court, on the 22nd day of December, 1869, confirmed; and I do hereby further certify that so far as can be ascertained from the records and files in my office no other or further proceedings have been had in said cause.

Given under my hand and the seal of our said court hereto affixed, at my office in Nebraska City, in said county of Otoe and State of Nebraska, this 4th day of November, A. D. 1882.

[Seal of Otoe County District Court.]

W. F. N. HOUSER,
Clerk of the District Court.

BURR (to Hall): Have you got any more testimony to put in?

HALL: Yes; but not for this afternoon, as we cannot get the witnesses present.

An adjournment being proposed—

Objection to Adjournment.

BURR: I object to the adjournment taking place, because we have the right, and should have the right, to have their evidence put in, so that we may rebut it if it should be necessary before the time for taking this testimony closes; and we demand and ask that the plaintiffs in this case produce and furnish their testimony, and all of it, that we may have a reasonable time to rebut, if the same be necessary, before the case is closed; and we object for the further reason that the examiner notified all parties last Saturday that he would be compelled to go to Plattsmouth on Wednesday next, and that he could not be here to take this evidence, and that if the complainants close their testimony the examiner can be here to hear the rebuttal testimony, if any we have to produce.

502 There being no other witnesses present, the further taking of testimony in this cause was adjourned until Tuesday, November 7th, at 10 a. m., then to proceed, the place being room No. 7, on the upper floor of the Government building, Lincoln.

At the time and place immediately above named the taking of testimony in the cause was resumed, Mr. Ames appearing for Little & o'rs, and Mr. Burr for Giles & o'rs.

Roberts' Estimates as to Buildings on Block 54.

ARTEMUS ROBERTS recalled and examined by AMES:

Q. 1. What is your profession?

A. Architect.

Q. 2. How long have you been engaged in the practice of that profession?

A. About 15 years.

Q. 3. What portion of that time in Lincoln, Nebraska?

A. Twelve.

Q. 4. Are you acquainted with the property in controversy on the south side of Government square, occupied by David May as a clothing store, W. J. Turner as a drug store, Trickey & Co. as a jewelry store, and by Redford as a shoe store?

A. Yes, sir.

Q. 5. Have you recently made a special examination of it for the purpose of ascertaining the value of the improvements thereon, so as to judge of the prices of the property respectively?

A. Yes, I have made estimates on them respectively.

David May's clothing store:

419 yards excavation at 30 cents	$125 70
130 perch of stone at $2.60	338 00
126,000 bricks at $11.00	1,386 00
1,300 yards of plaster at 30 cents	390 00

23 squares *to* tin roof at $7.00		$161 00
Lumber and carpentry		1,276 00
	Glass, etc.	300 00
503	Painting	90 00
	Iron front	125 00
		$4,291 70
Less 5 per cent.		210 00
		$4,081 70

Owen & Oakley's store (Turner's drug store):

375 yards of excavation at 30 cents	112 50
105 perch of stone work at $2.60	273 00
84,000 brick at $11	924 00
1,070 yards of plastering at 30 cents	321 00
19 squares of tin roof at $7.00	321 00
Lumber and carpentry work	981 00
Glass	275 00
Painting	70 00
	$3,089 50
Less 10 per cent.	308 90
	$2,780 60

Building owned by D. B. Alexander (Trickey's jewelry store):

290 yards of excavation at 20 cents	58 00
80 perch of stone at $2.60	208 00
70,000 brick at $11.00	770 00
900 yards of plastering at 30 cents	270 00
15 squares of tin roof at $7.00	105 00
Lumber and carpentry work	864 00
Glass in fronts, etc.	275 00
Painting	60 00
	$2,610 00
Less 10 per cent.	261 00
	$2,349 00

504 Stuart's store, occupied as shoe store by Redford:

375 yards of excavation at 30 cents	112 50
105 perch- of stone at $2.60	273 00
98,000 brick at $11.00	1,078 00
1,260 yards of plastering at 30 cents	378 00
19 squares of tin roof at $7.00	123 00
Lumber and carpentry work	1,041 00

Glass, etc.	$275 00
Painting	30 00
	$3,370 50
Less 10 per cent.	337 00
	$3,033 50

Q. 7. Did you examine the foundations of these buildings with the view of determining their stability?

A. I did, and have already testified on the subject.

Cross-examined by BURR:

Q. 8. As I understand you, Mr. Roberts, you have made an estimate of the cash value of the buildings as if they were erected to-day?

A. Yes, sir.

Q. 9. You have made no deduction for the wear and tear of any of the buildings?

A. No, sir.

Q. 10. Your estimates are all based on the building of new buildings?

A. Yes.

Q. 11. The estimate is as if erected at the present day?

A. The same.

Q. 12. You examined these buildings yesterday and to-day?

A. No; I examined them last week.

Q. 13. Cannot you give an estimate of the wear and tear upon the buildings—the store buildings that have had the fronts
505 taken out and the grade lowered and the floor lowered—cannot you give an estimate of the depreciation of buildings by the wear of 10 years and the changes that have been made? These buildings, they have been changed. Take these three stores to the east, being your numbers 2, 3, & 4, these buildings have been erected some 10 or 11 years—not less than 10 nor more than 12 years. I will further assume that the first floors have been lowered 2 to 4 feet; I will further assume that new fronts have been put in, the original fronts having been taken out; what, in your judgment, would be a fair deduction from the price of new buildings for the wear and tear of 10 years, and such changes as I have suggested?

A. I think that 10 per cent. will be sufficient. I can give my reasons for it if you wish.

Q. 14. What per cent. would you put on the David May building, that has been occupied 4 or 5 years?

A. About 5 per cent.—less, not more any way. In making my estimate I have estimated that the party walls are on the centers of their respective lot lines, and I have estimated the one-half of each party wall as belonging to the building I was estimating upon.

Witness excused.

There being no further testimony ready to be adduced the further taking of testimony was adjourned till Wednesday morning, November 8th, at 10 a. m., at the same place.

At the time and place just stated the taking of testimony was resumed, Mr. Ames and Mr. Hall appearing for the parties Little & o'rs, and L. C. Burr for the parties Giles & o'rs.

Boggs as to Taxes on Block 54 and 40 Acres South of Lincoln.

J. W. BOGGS sworn and examined by AMES:

Q. 1. Where do you live?

A. In the first ward in Lincoln, Nebraska.

506 Q. 2. Do you hold any official position?

A. I am deputy treasurer of Lancaster county.

Q. 3. Do you know what taxes have been paid, and by whom, since 1870, on the lots in controversy in this action in block 54, of this city?

A. I believe I have a memorandum of it here.

Q. 4. Compiled from the treasurer's records?

A. Compiled from the records and tax lists.

Q. 5. State fully what taxes are and who paid the same, when they were paid, and the amounts, as you find the same on your records.

BURR: I make no objection to the witness reading his memorandum from the records, which he says is correct, on the ground that the treasurer's record- are not here produced, but because the testimony is incompetent, immaterial, and irrelevant, because certain of the premises in the possession of Little and Alexander, plaintiffs herein, have been sold to one W. F. Little, the cousin or other relative of S. W. Little, and cousin or other relative of Alexander, and the sale of the premises at tax sale have been made and assigned to W. J. Lamb, attorney of the plaintiffs in this cause by W. F. Little, is wholly immaterial and irrelevant, and because money paid by W. F. Little or W. J. Lamb cannot be recovered by S. W. Little nor Alexander nor any of them; and a life tenant in possession of the premises must pay, and it is his duty to pay, the taxes annually upon the premises in his possession as long as he holds his tenancy, and because a tenant holding any of the premises under the will in question here was bound and it was his duty to pay all of the taxes assessed against the premises.

507 A. The records show county taxes for 1869, W. ½ of lots 3, 4, 5, & 6, in block 54, Lincoln, Nebraska, paid $120.00, receipt 689.

City taxes for same year—

W. ½ 3,	block 54,	paid	May	11, '76,	$5.00,	by Sherwin.
4,	"	"	"	"	30.00,	do.
5,	"	"	"	"	4.00,	do.
1 fr. E. side 6,	"	"	"	"	1.64,	do.

County taxes for 1870, W. ½ of lots 3, 4, 5, & 6, in block 54, $174.00, paid Oct. 19, '71, by A. Cody.

City taxes for the same year on W. ½ of lots 3, 4, 5, and 6, paid Oct. 19, 1871, by L. Cody.

For this year the total city taxes on lots 1, 2, 3, 4, 5, and 6, in block 54, is $61.00.

County taxes for 1871, 12½ feet west side of 3 and 9, ½ foot east side of 4, $33.30, paid July 22, 1872, by Sherwin.

City taxes for the same year on the same property, $13.50, paid July 22, 1872, by Sherwin.

1872.			
12½ feet, W. side 3	Paid July 7, '73. F. T. Sherwin. County, $86.00; city, $30.		
9½ " E. " 4	Paid July 7, '73. F. T. Sherwin. County, 64.50; city, $22.50.		
1873.			
12½ ft., W. side 3	County tax paid June 20, '74, by F. T. Sherwin		67 60
9½ " E. " 4	City " " " "		33 60
1874.			
W. ½ of 3 and	County tax paid July 10, '75, by Sherwin		95 50
9.77 E. side of 4	City " " 6, " "		46 00
1875.			
W. ½ of 3 and	County tax paid June 2, '76, by Sherwin		77 19
9.31 E. side of 4	City " July 3, " "		70 00
508 1876.			
Do.	County tax paid July 7, '77, by Sherwin		94 44
Part of 3 & 4	City " July 23, '77, "		69 90
1877.			
W. ½ of 3 (12½ ft.), part 4 (9.30, E. side).	County tax paid May 25, '78, by Sherwin		93 44
W. ½ of 3 & 9.37 4	City " Oct. 1st, '78, "		72 50
1878.			
W. ½ of 3 and	County tax paid June 5, '79, by Sherwin		91 95
9.30 of 4	City " Aug. 15, '79, "		75 00
1879.			
Do.	County tax paid June 4, '80, by Sherwin		102 07
	City " " " "		86 10
1880.			
Do.	Tax paid July 2, '81, by Sherwin		177 30
1881.			
Lot 6, in subd. in 1 to 6, block 54.	$194.50. Not paid.		

Taxes in what is now Subdivision D, in 1 to 6, Block 54.

1871.			
15½ ft., W. side 4	County tax paid Sept. 2, '75, by L. Cody		$33 30
6½ " E. " 5	City " paid July 29, '72. (No name)		13 50

The county tax-book is marked thus:

33.30 — P'd 2-9-'72. L. Cody.
1 ft. 4 in. P'd 15-4-'72. L. Cody.

1872.			
15½ ft., W. side 4	County tax paid August 30, '73. L. Cody. This is half the tax; other half remitted.		150 00
6½ " E. " 5	City tax is marked one-half paid July 1, '73. No name.		105 00
509 1873.			
Do.	County tax paid August 26, '74, by L. Cody		67 60
	City " " "		33 60

1874.

15.63 ft., W. side 4	County tax paid May 15, '75. L. Cody		$95 50
6 ft. 3 in. E. " 5	City " August 31, '75. do.		46 00

1875.

Do.	County tax paid August 9, '76. Cody	77 19
	City " Sept. 8, '76. L. Cody. A. H. Wait	70 00

1876.

Do.	County tax paid Oct. 18, '77. Cody	94 44
P't 4 & 5	City " " Cody, per Sherwin	69 60

1877.

Do. 15.63 of 4	County tax paid April 27, '78. D. B. Alexander	85 96
& 6¼ of 5	City " May 1, " "	72 50

1878.

15.63 of 4, and 6 ft. 3 in. 5	County tax paid Apr. 14, '79. D. B. Alexander	84 55
15.65 of 4, and 6 ft. 3 in. in 5	City " " 14, " "	69

1879.

Do. as county	County tax paid April 28, '80. D. B. Alexander	99 23
	City " " 28, " "	69

1880.

Do.	$165.48. Sold for tax Nov. 15, '81. W. F. Little.	
	$183.25. Actual amount paid.	

1881.

Lot D	$194.25. Paid under cert'f, by W. J. Lamb, Nov. 6, '82.	

510 *Taxes on what now is Subdivision E, in* 1 *to* 6, *Block* 54.

1871.

18 ft. W. side 5	County tax, $33.30, 3½ paid 2–9–6. A. Cody.	
3½ " E. " 6	City tax, $13.50, 18½, west side, p'd 15–4–'72. L. Cody. Paid Ap'l 15, '72. No name.	

1872.

18½ ft. W. side 5	County tax paid August 11, '73, W. W. Wilson	$150 50
3½ " E. " 6	City tax paid April 29, '73. No name	52 50

1873.

W. 8½ ft., 5	County tax paid August 5, '74. W. W. Wilson	67 60
E. 11½ " 6	City " " March 30, '74. do.	33 60

1874.

18 ft. 9 in. W. side 5	County tax paid April 26, '75. Wilson	95 50
8 in. E. " 6	City " " " 24, " do.	46
	City tax is only on 18 9/12 of 5.	

1875.

Do.	County tax paid May 30, '76. J. D. Bacon	73 31
	City " " " " " do.	70 00

1876.

Do.	County tax paid May 30, '77. Bacon	94 44
P't 5 & 6	City " " " " do.	69 60

1877.

Do.	County tax paid July 31, '78. Bacon	85 96
Do.	City " " " " do.	81 20

1878.

18 ft. 9 in. 5, 8 in. 6	County tax paid June 30, '79. Bacon	91 90
Do.	City " " do.	75

1879.

Do.	County tax paid June 22, '80. Bacon	102 90
	City " " " " do.	86 10

511	1880.			
	Do.	Tax paid May 5, '81.	Owen & Oakley	$165 40
	1881.			
Lot E. s'b 1 to 6, bl'k 54		Not paid		194 25

Taxes in what is now Subdivision F, 1 to 6, Block 54.

	1871.			
21½ W. side 6	County tax paid	Sept. 2, '72.	A. Cody	$37
Do. 6	City "	"	A. Cody	15
	1872.			
21½ ft. W. side 6	County tax paid	Aug. 30, '73	A. Cody	107 50
	City "	"	No name	37 50
	1873.			
21½ ft. W. side 6	County tax paid	April 8, '74.	Aldus Cody	59 15
	City "	"	do.	29 40
	1874.			
24 ft. 4 in. W. side 6	County tax paid	May 28, '75.	A. Cody	66 85
24 " " "	City "	"	do.	32 20
	1875.			
24 ft. 4 W. 6	County tax [paid]	May 31, '76.	S. W. Little	61 75
24 —	City "	April 13, "	"	49 00
	1876.			
24 ft. 4 in. W. 6	County tax paid	Aug. 24, '77.	Little	78 70
24 ft. 6 in.	City "	June 2, '77.	do.	58
	1877.			
24 ft. 4 in.	County tax paid	May 11, '78.	Little	74 75
"	City "	July 6, '78.	do.	58
	1878.			
"	County tax paid	July 24, '79.	Little	73 52
"	City "	" 31, '79.	do.	60
512	1879.			
"	County tax paid	June 2, '80.	Little	128 63
	City "			107 62
	1880.			
Do.	Sold for tax to W. F. Little, Nov. 15, '81			206 85
	Actual amount paid			229 07
	1881.			
Lot F, s'b 1 to 6, bl'k 54	P'd cert'f, W. J. Lamb, Nov. 7, '82			259 00

Q. 7. Do you know what taxes have been paid, and by whom since 1874, on the S. E. of the south-E. 4th of 35, 10, 6, 40 acres of land in controversy in this action?

A. I do, and I have a memorandum of it here.

Q. 8. Compiled from the treasurer's records?

A. Compiled from the records and the tax-list.

Q. 9. Is it correct?

A. Yes, it is correct.

Q. 10. State fully what the taxes are, and who paid the same, when they were paid, and the amounts as you find them on your records?

BURR: We make no objection to the witness reading his memorandum from the records, and which he has said is a correct copy, on the ground that the treasurer's records are not produced; but we object to the testimony as incompetent, immaterial, and irrelevant.

A. The taxes on the S. E. of the S. E. ¼ of 35, 10, 6 east, 1874, taxes

paid the 16th of June, '75, by E. J. Dawson. 1875—I am unable to find any tax assessed against this piece this year.

1876 taxes, $15.74, paid May 28, '75. W. C. Vandorn.

1877 taxes, $23.43, paid July 23, '78. Vandorn & Lashley.

1878 taxes, $14.70, paid 23 Dec., '79. Vandorn & Lashley.

513 1879 taxes, $14.70, paid April 30, 1880. Vandorn & Lashley.

[1879] taxes, $2.80, [paid] April 30, '80 (school tax separate). Vandorn & Lashley.

1880 taxes, $21.21, paid May 4, '81. Vandorn & Lashley.

1881 taxes, $61.50, paid July 31, '82. Vandorn & Lashley.

Witness excused.

Gebhardt as to Sale in South Lincoln.

AMBROSE GEBHARDT sworn and examined by AMES:

Q. 1. Where do you reside?

A. Lincoln, Nebraska.

Q. 2. How long have you lived there?

A. I came here in April '71.

Q. 3. Are you acquainted with Mr. L. C. Burr?

A. Yes, sir.

Q. 4. Do you know the property that adjoins Lincoln on the south and is called "Dawson's addition to South Lincoln?"

A. Yes, sir.

Q. 5. Was you present there at the time of the public sale of lots in the year 1875?

A. Yes; I have been present myself.

Q. 6. Was Mr. Burr there?

A. Yes, sir.

BURR: I object to this testimony as incompetent, immaterial, and irrelevant.

Q. 7. Do you know what time of the year it was?

A. I cannot remember exactly; I do not know whether it was spring or fall; I believe it was fall; I do not know [as] I could say exact-.

Q. 8. Who was the auctioneer?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. I cannot remember.

Q. 9. Did you hear Mr. Burr make any statements there with respect to the title?

A. I heard a statement made, and I asked about it before it was bought. I bought lot 11, in block 47. I understood that statement that much, that everything would be in perfect good order; they were going to sell it and it would be bid off; that they had a perfect, good title to the property, so I understood, or I would not buy it, and so did they all.

514 Q. 9. Did you hear him say anything about it?

A. I heard Mr. Burr say; I believe I asked him myself if

everything was fair, and he said "Yes." I knew Mr. Burr before that time.

Q. 11. What did you buy?

A. I only bought a lot for $25, payable in four years—lot 11 in block 47.

Q. 12. Who did Mr. Burr make his statement to?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. Public; everybody understood that; it is a statement made before the sale commenced.

BURR: I object to this answer as incompetent and not responsive, and move to strike it out for that reason.

Cross-examined by BURR:

Q. 13. When was this sale?

A. When was the sale? In '75; but I could not remember what month or what day.

Q. 14. You are sure it was in 1875?

A. I am not particularly sure of that; I could not say whether '74 or' 75; I do not know; I am not sure; but these gentlemen asked me '75, and I thought so—I could not tell that, if it was '74 or '75, yet I know it was not '73.

Q. 15. Did you buy a lot?

A. I did, sir.

Q. 16. Did you pay for it?

A. I paid you the interest for two or three years; I forget; you gave me a receipt for it, and I have got that to-day.

Q. 17. Did you get the lot?

A. No; I paid two or three years and I let it go.

Q. 18. It was not worth paying for?

A. There was nothing paid but interest on the capital; and I believe I paid taxes.

Q. 18. Are you a party to this lawsuit?

A. No; I never sued nobody, and I never want to sue nobody. I let it go without any trouble about it—let it slip; it was my own fault and I do not want to sue anybody about it.

Witness excused.

515 *Lansing as to Insurance.*

J. F. LANSING recalled and examined by AMES:

Q. 1. What is your business in addition to real estate?

A. Insurance business.

Q. 2. Do you know what premiums have been paid for insurance the last 10 years on the property occupied by Turner as a drug store, and by whom the same has been paid?

A. Yes.

Q. 3. You may state the amount and who paid it.

Burr objected [as] immaterial, irrelevant, and incompetent under the issues.

A. About $500 paid by W. W. Wilson, J. D. Bacon, and Owen & Oakley.

Q. 4. Can you tell now the proportion paid by each?

A. I could not without it was carefully looked up.

Q. 5. Can you tell how much has been paid since Nov., '79?

A. Yes; about.

Q. 6. Say as to the amounts so paid.

Burr objected [as] incompetent, irrelevant, and immaterial.

A. About $150.

Cross-examined by BURR:

Q. 7. Do you know whether the other three buildings are insured or not?

A. No, sir; not the others—yes, there is one where I am now is insured—the one Alexander has now.

Q. 98. How much is that?

A. I think it is $1,500; it will expire in the coming March.

Q. 9. Has Mr. Alexander expressed to you that he would refuse to insure hereafter?

Ames objected [as] incompetent, immaterial, and hearsay.

A. No.

Q. 10. Do you know whether the other buildings are insured or not?

A. No; I never carried on any of the other buildings. I presume they are; I think the policy Mr. Alexander has is the first policy he has had.

Q. 11. Is it not the general rule and policy of Mr. Little not to insure his buildings?

Ames objected [as] incompetent, immaterial, and hearsay.

A. Yes.

Q. 12. Are you a member of the insurance board of Lincoln?

A. Yes.

516 Q. 13. Is it your best knowledge and information that the S. W. Little building here in suit is not insured?

Ames objected [as] incompetent, immaterial, and hearsay.

A. Under that rule he generally carries his own insurance. Of course I could not tell whether he is insured or not.

Re-examined by AMES:

Q. 14. Do you know the amount of premium that has been paid on that $1,500 policy of Mr. or Mrs. Alexander?

A. Yes.

Q. 15. How much?

Barr objected [as] incompetent, immaterial, and irrelevant.

A. If it is $1,500 it is $18.75; if it is $1,000 it is $12.50; I think it is $1,000; but I am not quite sure.

Witness excused.

The further taking of testimony was here adjourned till 7 p. m. at same place, when the taking of testimony was resumed, Mr. Hall appearing for Little & or's, and Mr. Burr for Giles & or's.

Cook's Estimate as to Building on Block 54.

DAVID T. COOK sworn and examined by HALL:

Q. 1. What is your business?

A. Carpenter.

Q. 2. How long have you lived in Lincoln?

A. 4 years.

Q. 3. How long have you been a carpenter and builder?

A. All my life; all the time, say 25 years, since I commenced the trade.

Q. 4. You may state whether or not you have made an estimate of the building in block 54, Lincoln, occupied by Mr. Turner as a drug store.

A. I have.

Q. 5. Will you now give a detailed statemen, showing the results of the examination you have made of that building?

Burr objected [as] incompetent.

A. In the building is:

416 yards of excavation		104 00
85 perch of rubble-stone		255 00
517	918 feet of black walnut and maple flooring	60 24
2,560 feet second quality flooring		100 24
55,752 bricks		616 75
1,983 feet third quality flooring		58 14
404 feet 8 inch base		24 00
5 windows 12 by 18, 8 lights		45 00
1,093 yards of plastering		273 25
8 doors, 2 feet 8 inch by 6 ft. 8 in., plain		100 00
3 windows 14 by 44, 4 lights		30 00
1 door 3 by 7, transom 12 by 34, 1 light		12 00
1 pair box stairs		35 00
1 cellar stairs		6 50
1 hatchway and steps		10 00
1 door at bottom, 3 ft. 4 in. by 6 feet		7 50
1 skylight, 2½ by 2½		6 00
1 cellar window		5 50
Hardware		85 00
Painting		125 00
Gas-pipe		48 50
Tin roof and down pipe		126 00
Laying floors and framing		77 32
Making fronts and setting		94 00
Work on lintel		6 00
Plate-glass		290 00
Platform front windows		10 00
Lumber		267 58
		$2,878 62

There is one thing there that is approximated, and that is the plate-glass. That I approximated of other estimates I have of
518 other buildings. I did not have time to get an estimate of that.

Cross-examined by BURR:

Q. 6. As I understand you you have figured up on what a new building would cost?

A. Just to replace the building—that is, new; of course it would be new; that is, it would be in no better condition than that which is there at present.

Q. 7. Except it would be a new building?

A. Yes.

Q. 8. I am assuming that the building has been erected 10 or 11 years and in constant use; what per cent. should be deducted for wear and tear of a new building for that time?

A. Without repairs I could not say.

Q. 9. Keep it in fair repair?

A. I do not think there should be any.

Q. 10. Suppose the floor had been lowered to 4 feet and the front taken out and a new front put in?

A. It would make no change, provided there had been no damage done to the building.

Q. 11. Did you not examine to see if the floors had been lowered?

A. I examined and found the first floor had been relaid and was a better floor than before.

Q. 12. Do you know what used to be in?

A. Yes, sir; I knew exactly, for I tore out the old and put in the new.

Q. 13. Has this building an iron or wood front?

A. It has a wood front.

Q. 14. What did the other front consist of—wood or iron?

A. I do not know what the other front was; I figured on the building there to-day; I do not know what the other building was.

Q. 15. Are you the person that lowered this buiding?

519 A. You did not understand me so.

Q. 16. You just laid a new floor over the other?

A. No, I took out the other.

Q. 17. Is the paint in as good condition now as if it had just freshly been painted?

A. I should think it is.

Q. 18. You would say there has been no wear or tear on this building?

A. I do not say that exactly.

Q. 19. Of this estimate of $2,800 what per cent. would you say should be taken for wear and tear and use of the premises?

A. It might possibly reach 5 per cent.; I would not estimate it more than that. There is only one thing which I should say could be damaged by wear and tear, and that is the tin roof; that requires to be replaced ever so many years.

Re-examined by HALL:

Q. 20. You think the only damage would be to the tin roof, and that would be 5 per cent.?

A. Well, yes; 5 per cent. would cover all the damage.

Q. 21. Just on the roof?

A. On the whole building; that is, where the building is kept in repair at all.

Q. 22. Has this building been kept in good repair?

A. It has, sir.

Witness excused.

Galey as to Relations with Mrs. Dawson & Dawson Property.

S. B. GALEY sworn and examined by HALL:

Q. 1. Where do you live?

A. I live in Lincoln, Nebraska.

Q. 2. How long have you lived here?

A. It is 16 years ago last April since I came here.

Q. 3. Do you know Editha J. Dawson?

A. I know a person whose name used to be Editha J. Dawson.

520 Q. 4. When did you first know Editha J. Dawson?

A. In the year 1866.

Q. 5. You knew Editha J. Dawson about the time of the death of Jacob Dawson—along about June or July, 1869?

A. Yes, sir.

Q. 6. You knew her at the time of the death of Jacob Dawson?

A. Yes, sir.

Q. 7. At that time of whom did the family of Editha J. Dawson consist—how many children were there, if any?

Burr objected [as] incompetent, irrelevant, and immaterial.

A. My recollection is that there were three boys and, I think, three girls; but I am not certain about that.

Q. 8. You may state, if you know, as near as you recollect, about the age of the oldest child at the death of Jacob Dawson.

Burr objected [as] incompetent, immaterial, and irrelevant.

A. I do not know, except as I might guess at it.

Q. 9. Do you know whether he was of age or not?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. I am not certain about that, whether he was or not.

Q. 10. You may state, if you know, at the time of the death of Jacob Dawson, the of nature the property left by him, and all of the property that she owned in her individual right, if any—what kind of property it was.

Burr objected [as] incompetent, immaterial, and irrelevant, and not the best evidence.

A. It was real estate, possibly a little personal property—a cow or two and a couple of horses.

Q. 11. What was the condition of this real estate? State if you know as to whether any had been improved.

Burr objected [as] immaterial, incompetent, and irrelevant.

A. It was not improved, except, perhaps, there were a few acres of ground broken about the house—possibly 25 or 30; I am not certain about that.

521 Q. 12. State fully as to all the property she owned and its nature at that time.

Burr objected [as] incompetent, immaterial, and irrelevant, and not the best evidence.

A. I am not able to describe all the property that she owned at that time; I know that it consisted of unimproved real estate, unproductive, except the place where she lived; as I stated there was perhaps 25 or 30 acres broken, and a stone house which she lived in, on the place.

Q. 13. State whether there was any revenue received—any rents or profits from any of the property she owned at that time.

Burr objected [as] incompetent, immaterial, and irrelevant.

A. There was no rent or any revenue received from any of the property that she owned at that time, except as it was disposed of by sale.

Q. 14. State as near as you can recollect, approximately, the ages of the children.

Burr objected [as] incompetent, immaterial, and irrelevant, assuming that he knows, and leading.

A. I know the girls were quite young, probably from 2 to 7 years old; the youngest boy was probably 9 or 10 years old; the next was perhaps 12 or 13; and the oldest I would say would be about 20, probably not so old.

Q. 15. Where did these children live and with whom?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. With their mother.

Q. 16. By whom were they supported?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. By their mother; they had no other means of support that I know of.

Q. 17. What amount, if any, at that time of chattel property did Mrs. Editha J. Dawson own?

Burr objected [as] incompetent, immaterial, and irrelevant,
522 not the best evidence, and calling for hearsay.

A. I do not remember exactly; but I know it was very little.

Q. 18. You may state whether or not you knew of the condition of Mrs. Dawson at that time, as to whether or not she was in debt, out of debt, or had any debts?

Burr objected [as] incompetent, immaterial, and irrelevant, not the best evidence, and calling for hearsay testimony.

A. I do not remember whether she owed any debts at that time or not.

Q. 19. Do you remember whether the estate did?

Burr objected [as] incompetent, irrelevant, and immaterial, not the best evidence, and calling for hearsay testimony.

A. I remember there was some debts—claims against the estate of Jacob Dawson, deceased.

Q. 20. You may state, if you know, whether these debts were paid, and, if so, where the money came from that paid them.

Burr objected [as] incompetent, immaterial, and irrelevant, and not the best evidence, calling for hearsay testimony, leading, and assuming that the witness knows there was some debts, and assuming they were paid.

A. Whatever debts existed against the estate of Jacob Dawson, deceased, were paid out of the proceeds of the sale of real estate.

Q. 21. You may state whether or not you were ever employed as her attorney by Mrs. Dawson?

A. I was employed as her attorney and agent by her some time after the death of her husband.

Q. 22. How long did you act as her agent and attorney?

A. I think about 4 or 5 years.

Q. 23. State whether or not any of the children of Editha J. Dawson were engaged in any business during that time.

Burr objected [as] incompetent, irrelevant, and immaterial
523 and leading.

A. The oldest boy was engaged, as I think, in the grain business with Mr. Scroggin; after that he was engaged in the grocery business for some time; and after that I think he went into—I think—the business of farming and stock-raising in Butler county, in this State.

Q. 24. Do you know when he first went into the mercantile business, what year?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. I do not remember exactly; I think it was perhaps in 1870; that is my best recollection.

Q. 25. What was his name?

A. They called him "Hamp." I think his name was John Hampton Dawson.

Q. 26. You may state whether or not John Hampton Dawson had any means of his own.

Burr objected [as] incompetent, irrelevant, and immaterial.

A. He had no property that I know of, except what was advanced to him or given him by his mother.

Q. 27. Did his mother advance him any money with which to go into business?

Burr objected [as] incompetent, immaterial, irrelevant, leading, and calling for hearsay.

A. She did.

Q. 28. State, if you know, how much and for what purpose.

Burr objected [as] incompetent, immaterial, irrelevant, leading, and hearsay.

A. I do not remember how much; I remember of some advances that were made.

Q. 29. State, if you know, in regard to any advances made by Mrs. Dawson to her son for any purpose.

A. I know that $500, or about that sum, was advanced to him by his mother, or given to him, about the time he went into the grain business with Scroggin; afterwards there was $500 advanced to him, or about that sum—I will not be certain it was just the amount —when he went into the grocery business with a son of Mr.
524 Scroggin; and then he subsequently bought out the interest of his partner, Mr. Scroggin, and there was some money advanced to him at that time by his mother, but I do not remember the amount. Subsequently to that there was about $1,600 or $1,700 advanced to him, which he used in building a house on a school lot out here, on section 36 of this township; and subsequently to that there was something over $3,000—I should say less than $3,500 and more than $3,000—advanced to him, which he used in the purchase of some land in Butler county, the purchase of some sheep, and possibly some other stock, and the building of a house on his land. He went to Salt Lake for his health——(BURR: I object to this testimony as not being responsive to any question, and immaterial, incompetent, and irrelevant, and request that questions may be asked witness, that we may save our objections.) When he went to Salt Lake for his health I think about $500 was advanced to him to pay his expenses. He took his family with him and he died out there; but before his death, however, I think a draft of $200 was sent him by his mother; and upon his death, and his body being returned here, there was $300 or $400 doctor's bills and undertaker's bill paid by her. I should think that $1,000 was advanced to him on that trip by her. These are all the items I now particularly remember.

Q. 29. State, if you know, from what sources these various advances and amounts were received that were made to Hampton Dawson.

525 Burr objected [as] incompetent, irrelevant, and immaterial.

A. This money that was advanced to him was derived from the proceeds of the sale of real estate.

Q. 30. You may state, if you know, from what sources Mrs. Dawson received this real estate.

Burr objected [as] incompetent, immaterial, and irrelevant, and not the best evidence.

A. It was real estate—the most of it was real estate that belonged to Jacob Dawson, her husband, during his lifetime.

Q. 31. You may state, if you know, the real estate that was sold from which this money was derived, if any?

Burr objected [as] irrelevant, incompetent, and immaterial, and not the best evidence.

A. I could not say that these particular advantages were derived from the sale of any particular real estate. I acted as her agent in the sale of the property and we sold lots in South Lincoln, lots here in the city of Lincoln, lots in Capital addition, and I think some lots outside of the city and near the city.

Q. 32. You may state, if you know, where Mrs. Dawson lived at the time of the death of her husband.

Burr objected [as] incompetent, immaterial, and irrelevant.

A. She lived in this city, I think in block 54—I think lots 3 and 4, perhaps, the house was situated.

Q. 33. You may state, if you know, what kind of a house that was.

Burr objected [as] incompetent, irrelevant, and immaterial.

A. It was a house built of sandstone, two stories, the first story being a basement story— a square house probably 30 feet square.

Q. 34. State, if you know, what part of the house the family occupied at the time of his death as a residence.

Burr objected [as] incompetent, irrelevant, and immaterial.

526 A. They resided in the basement.

Q. 35. You may state, if you know, the nature and condition of that basement as a dwelling?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. It was—I cannot state the exact condition of it; I know it was a rather gloomy, uncomfortable place to live—it would be for me.

Cross-examined by BURR:

Q. 36. Was you not one of the appraisers of the personal property and the real estate on the probating of Jacob Dawson's will?

A. I do not remember whether I was or not; I think not.

Q. 38. If you was, and [if] you ever made an affidavit of the value of the real estate and personal property, that affidavit is true?

A. It was certainly true according to the best of my judgment at the time.

Q. 39. If the property is valued in that appraisement under the law at that time, the appraisement would be, in your judgment, correct?

A. The appraisement would be, in my judgment, the value of it at that time.

Q. 40. Will you swear you was not one of the appraisers in the appraisement of the real and personal estate of Jacob Dawson on the probating of his will?

A. I would not swear positively I was not; I have no recollection now.

Q. 41. Do you swear you have no recollection of being one of the appraisers?

A. I do.

Q. 42. Did not you and R. R. Tingley, under the order of court of Lancaster county, appraise the real and personal estate of Jacob Dawson, deceased?

A. It seems to me I did have something to do with Mr. Tingley; but I have no recollection of what it is now, or what it was; it is possible I was one of the appraisers.

527 Q. 43. You say Mrs. Dawson was owner in her own right of all the Capital addition, was she not?

Hall objected [as] incompetent, immaterial, and irrelevant.

A. That is my recollection.

Q. 44. She was also the owner, of a large amount, or a considerable amount of real estate in the city of Lincoln, was she not, in her own right?

Hall objected [as] incompetent, immaterial, and irrelevant, and not proper cross-examination.

A. I do not remember.

Q. 45. Did not Mrs. Dawson own the lot adjoining W. W. Wilson's lot which you traded as her agent or attorney in fact to Jamison and Stout, for the building of what is known as the Fitzgerald house, for a consideration of $10,000?

Hall objected [as] incompetent, immaterial, and irrelevant, and not the best evidence.

A. She did own that property at the time of Mr. Dawson's death.

Q. 46. I did not ask you that; I asked you if you did not exchange the lot on O street, on the east of W. W. Wilson's lot—I think it is lot 9 in block 53 in the city of Lincoln—to Jamison and Stout for the building of the brick building known as the Fitzgerald building that Mrs. Dawson built?

A. I do not understand the question. I will not this—that the property that she occupied at the time of Dawson's death—I think [it] was lots 3, 4, and 5.

Burr moved to strike out this answer as not responsive.

Q. 47. Do you know the premises occupied by Devereaux as a cigar store.

A. Yes.

Q. 48. Do you swear she did not own that property in 1874?

A. No, I do not swear so.

Q. 49. Did you not in the year '71 trade that property for her?

A. I think in '71 that property was taken in part payment

528 for the property she sold to Cody in block 54. She did not own it till that property was sold.

Q. 50. Then Mrs. Dawson was the owner of that lot in the spring of 1871?

A. In '71 or '2; I think in '71.

Q. 51. You say for exchanging what is known as the Cody block she received that lot now occupied by Devereaux in part payment by Cody for the premises.

A. Yes, sir.

Q. 52. That building rented for $100 a month, did it not?

A. I do not remember.

Q. 53. Will you swear it did not?

A. No.

Q. 54. Will you swear it did?

A. No.

Q. 55. Did she receive the rents, issues, and profits of that property?

A. After that purchase she received them for a short time.

Q. 56. From the spring of '71 till it was sold by Stout & Jamison?

A. Yes, sir.

Q. 57. That title was in her?

A. Yes, sir.

Q. 58. And she sold it and built the large Fitzgerald building with that and other moneys?

A. I do not know whether she built it out of the proceeds of that or not.

Q. 59. Did not you, as her attorney in fact, have executed a deed that conveyed that lot now occupied by Devereaux to Stout & Jamison.

A. I do not remember whether I did or not.

Q. 60. Is it not the consideration expressed in that deed, and is it not the fact, that it was part of the contract price for building the Fitzgerald house, for $10,000?

A. I do not remember; I think, probably, it was.

Q. 61. She had that real estate in her own right, and in various parts of the city of Lincoln had not she other property?

A. She traded for that subsequent to the death of Mr. Dawson.

529 Q. 62. How many acres had Mrs. Dawson in her own right that did not come to her under the will of Jacob Dawson at the time of his death?

A. I can only call to mind now that she subsequently laid out what is called Capital addition. There may have been some others; but I do not remember.

Q. 63. Do you know of any various lots and lands she owned in her own right you traded or exchanged for her, bought or sold for her, for several years after Jacob Dawson died?

A. Yes.

Q. 64. She owned 160 acres of land 3 and a half miles southeast of Lincoln, did not she?

A. I think so.

Q. 65. She owed a thousand or more lots in South Lincoln?

WITNESS: When?

BURR: Any time from one to three years after Jacob Dawson's death.

A. Possibly she did.

Q. 66. And the total value of Capital addition when it was laid out and platted by you as her attorney in fact; you did it, did not you?

A. Yes.

Q. 67. The total value of these lots—they were worth at one time an average of $250 a lot down to the years 1871 and '72?

Hall objected [as] incompetent, immaterial, and irrelevant, and not having laid the proper foundation for testifying as to the value of real estate.

A. I do not know what the value was at that time of the lots.

Q. 68. Did you not sell to Walsh & Putnam, in the spring of the year 1871, a half block of these lots in Capital addition for $250 a lot for Mrs. Dawson?

Hall objected [as] not proper cross-examination.

A. I think not; there was some lots, I do not remember how many, that were given to Walsh & Putnam in exchange for 40 acres of land outside of town.

Q. 69. You sold a great many of these lots in Capital addi-
530 tion, did not you?

Hall objected [as[incompetent, immaterial, and irrelevant, and not being the land in controversy.

A. I sold several of these lots.

Q. 70. How many do you call several of the lots in Capital addition, to your best judgment?

Hall objected [as] incompetent, immaterial, and irrelevant, and not being the land in controversy.

A. I do not remember now how many were sold.

Q. 71. How many lots were there in Capital addition?

A. I do not remember how many.

Q. 72. Do you remember how many blocks were there?

A. I do not at this time.

Q. 73. There are 12 lots in a block, were there not?

A. Yes, sir.

Q. 74. Do you remember how many blocks there were?

A. I do not at this time.

Q. 74. How much money did you realize—will you testify you realized—for her on the sale of lots alone in Capital addition during the years '71 and '72 and '73?

Hall objected [as] incompetent, irrelevant, and immaterial.

A. I do not know.

Q. 75. Will you not swear that in the month of February, 1872, you received over $20,000 for Mrs. Dawson at the time you made the sale to Dr Antrim—well from various sales made in the month of February, '72?

Hall objected [as] incompetent, irrelevant, and immaterial.

A. I would say I did not receive that much.

Q. 76. How much would you swear you received in that month?

A. I would not swear how much.

Q. 77. Will you swear you did not receive more than $20,000 for her in the month of February, 1872, as her agent?

A. That would be my best recollection that I did not receive $20,000 in any month, nor near that much, nor half of it.

531 Q. 78. Do you know how many lots you sold for Mrs. Dawson in South Lincoln?

A. No, sir.

Q. 79. You platted South Lincoln, did you not?

A. Had it done.

Q. 80. Caused it to be done for her—laid it out and platted it?

A. I caused it to be done.

Q. 81. It was done at the same time as Capital adddition?

A. No.

Q. 82. What was the contract price, do you remember, of the Fitzgerald house?

Hall objected [as] incompetent, irrelevant, and immaterial, and not the property in controversy.

A. It cost something over $17,000, the house and barn.

Re-examined by HALL:

Q. 83. You may state, if you know, where the money was derived from with which the building now occupied by Devereaux was purchased.

Burr objected [as] incompetent, irrelevant, immaterial.

A. It was the property in block 54, consisting of, as I remember now, only of lots 2, 3, and 4, and perhaps a part of 5, or a part of 2, I do not remember which, or whether both—at all events it was afterwards known as the Cody property in block 54.

Witness excused.

McClay. Mrs. Dawson's Residence in '69 & '70.

SAMUEL MCCLAY sworn and examined by HALL:

Q. 1. Where do you reside?

A. Lincoln, Lancaster county, Nebraska.

Q. 2. How long have you lived there?

A. About 15 years.

Q. 3. State whether or not you know where Mrs. Editha J. Dawson lived in 1869 and '70.

A. I do.

Q. 4. Where did she live then?

A. She lived in block 54 in Lincoln.

Q. 5. State whether or not you were ever in her residence about that time where she lived.

A. I have been a number of times.

532 Q. 6. State if you know the condition and the kind of a dwelling she occupied at that time; describe it fully.

Burr objected [as] incompetent, irrelevant, and immaterial.

A. She lived in a sandstone house with a basement, and the basement, perhaps, 8 feet between the joists, and, I think, about half the basement under ground—perhaps the first story was about 4 feet above ground. The house was unfinished—I think never had been plastered at all—no part of it.

Q. 7. Tell if you know anything pertaining to the house as a dwelling.

Burr objected [as] incompetent, immaterial, and irrelevant.

A. I should regard it as rather an inconvenient [and] uncomfortable house to live in. The manner in which it was constructed and the material of which it was constructed would lead me to believe it was not a very comfortable house It was very dark, I know, and very little light in the lower story, and where the family stayed most of the time. I think they occupied bed-rooms on the ground floor. It was not plastered. There was windows and doors in it, but my recollection is it was quite open—the upper story.

Q. 8. State if you know how the floor of the basement was laid.

Burr objected [as] incompetent, immaterial, and irrelevant.

A. I think my recollection is the floor was laid, perhaps, on 2 by 4 joists laid on the ground, anyhow very near the ground.

Cross-examined by BURR:

Q. 9. If this case is decided in favor of Ezekiel Giles you will be liable on a warranty deed, will you not?

Hall objected [as] incompetent, immaterial, and irrelevant, and not proper cross-examination.

A. I presume I will.

Witness excused.

533 The further taking of testimony in the cause was here adjourned to Thursday evening, November 9th, 1882, at the office of Messrs. Marquette, Deweese & Hall, attorneys-at-law, Lincoln, Nebraska, at which time and place the taking of testimony in the cause was resumed, Mr. Hall appearing for Little & o'rs and Mr. Burr for Giles & o'rs.

Boggs as to Payment of Taxes.

J. W. BOGGS recalled and examined by HALL:

Q. 1. You may state whether or not the taxes for 1881 have been paid on the premises known as the Owen & Oakley building and the one known as the A. P. S. Stuart building.

A. Yes, sir.

Q. 2. Have they been paid?

Burr objected [as] incompetent, irrelevant, and immaterial.

A. Yes.

Q. 3. What is the amount of the tax on the two buildings separately?

Burr objected [as] incompetent, immaterial, and irrelevant.

A. On each building it is $194.25, which is the face of the tax. The same were paid November 8th, 1882, A. P. S. Stuart paying the tax on his building and Owen & Oakley the tax on their building.

Witness excused.

Gerner as to Insurance.

HENRY GERNER sworn and examined by HALL:

Q. 1. Where do you live?
A. Lincoln, Nebraska.
Q. 2. How long have you lived there?
A. 12 years.
Q. 3. What is your business?
A. Insurance agent.
Q. 4. Did you insure the building in block 54, Lincoln, Nebraska known as the A. P. S. Stuart building?
A. Yes, and have for a number of years.
Q. 5. Do you know for how many years?
A. Yes, sir; since February '75.
534 Q. 6. You may state, if you know, what is the amount of premiums paid you on policies on that building.
A. Yes, sir.
Q. 7. You may state what are the amounts of the premiums paid to [you] for the insurance policies on that building.

Burr objected [as] incompetent, immaterial and irrelevant.

A. The premiums paid for the insurance on the two-story building, on lot 4, in block 54, from February 7th, '75, up to the time that Mr. Stuart became owner of the property, amounts to $143.25.
Q. 8. How much has been paid you by Mr. Stuart?

Burr objected [as] incompetent, irrelevant and immaterial, and for the further reason that there could have been and there was no policy of insurance taken out by Mr. Stuart on the premises.

A. $37.25.

Cross-examined by BURR:

Q. 9. Did you make a new policy at the time Mr. Stuart assumed control of these premises?
A. The insurance on the building then was in the name of Mr. Sherwin, and when Mr. Stuart bought the property Sherwin's policy was assigned to Mr. Stuart, and acknowledged by the insurance company, and when this old insurance expired, of course, the new policy was written in the name of Mr. Stuart.
Q. 10. And that policy is now in force with you?
A. Yes, sir.

Q. 11. Is there anything said in that policy as to the title to these premises?

A. Nothing whatever.

Q. 12. Is it an ordinary policy?

A. It is an ordinary policy given by the company to Mr. Stuart.

Q. 13. Do the insurance company know that the title to these premises is in litigation?

A. No, sir.

Q. 14. The policy assumes the title is in whom?

A. Mr. Stuart; yes, sir.

535 Q. 15. If the building was to be burned down and the title shown to be in somebody else, would the company pay this insurance?

Hall objected [as] incompetent, immaterial, and irrelevant.

A. Yes, sir.

Q. 15. Do the company know this lot is in litigation?

A. They do not; it is not their business.

Q. 16. Do they know the premises occupied by Owen & Oakley are in litigation?

A. I do not know, sir; I do not know anything about that.

Q. 16. Nothing is said in the policy about the premises being in litigation?

A. Nothing whatever.

Q. 17. The representations made by Mr. Stuart in the policy are that he is the owner of the title?

A. Certainly; he insured the property for his own benefit.

Q. 18. If the title is somewhere else the company would not be liable on a policy so issued?

A. I am not prepared to answer; that is a question for litigation.

Q. 19. Do you know where the policy is?

A. It is in Mr. Stuart's posession; it is his property.

Q. 20. Can you get a copy of it?

A. No, sir; not that policy, unless Mr. Stuart was willing to give it up for that purpose.

Q. 21 If any representations were made to Mr. Stuart that the property was in litigation and the title thereto uncertain, if any such representations were made in the policy would you be likely to know it?

A. I should think so.

Q. 22. There is no such representations in the policy?

A. No, sir.

Q. 23. Do you not know it to be a fact that S. W. Little and Alexanderin their stores adjoining this, nearly on the west—

536 if they do not make it a rule not to insure their premises?

Hall objected [as] incompetent, immaterial, and irrelevant, and not proper cross-examination.

A. I do not know; I believe Mr. Little makes it a rule not to insure his property at all.

Q. 24. You are a member of the insurance board, are you not?

A. Yes, sir.

Q. 25. Have you talked with either Mr. Little or Mr. Alexander about insurance lately?

A. Nothing whatever.

Q. 26. Do you not know it to be a fact that they carry their own insurance, and refuse to insure their buildings with any fire insurance company?

Hall objected [as] incompetent, immaterial, and irrelevant, and not proper cross-examination.

A. Only remarks made by Little. A year ago I asked him about insurance and he said he did not propose to insure his building; the rest I do not know nothing about. I know Mr. Alexander came to me once about a building he had a mortgage on, and he wanted it insured and he was very particular to have the Home, the best office he could get.

Q. 27. You are the agent of the Home Insurance Company?

A. Yes, sir.

Q. 28. And he carries no insurance on any of his property?

A. Not that I know of; I do not do any business.

Q. 29. He wants insurance on the fellow's property that owes him?

A. Yes, sir.

Witness excused.

537 *Deeds to Lots in Block* 54. *E. J. Dawson to Cody.*

HALL: I produce a deed which I believe was omitted when the other deeds were put in evidence. It is a certified copy of the record of a deed from Editha J. Dawson to Aldus Cody, and I now offer it in evidence.

Burr objected [as] incompetent, immaterial, and irrelevant.

The following is a copy of the paper thus put in evidence, and marked "Exhibit A 6:"

Warranty Deed. Editha J. Dawson to Aldus Cody. Filed for Record May 13th, 1870, 11.30 a. m.

Know all men by these presents that Editha J. Dawson, of the county of Lancaster and State of Nebraska, in consideration of the sum of ten thousand dollars, in hand paid by Aldus Cody, of the county of Lancaster, State of Nebraska, do hereby sell and convey unto the said Aldus Cody the following-described real estate, to wit: The west one-half (½) of lot number three (3) and all of lots number four (4) and five (5) and six (6), all in block number fifty-four (54), in the town of Lincoln, county of Lancaster, and State of Nebraska, according to the original survey of said town, subject, however, to a certain mortgage upon said lots four and five (4 & 5) and west one-half of lot three (3), bearing date the 28th day of August, A. D. 1869, and executed by said Dawson to Nelson C. Brock to secure the pay-

ment of the sum of twenty-six hundred [and] thirty-one and 58 one-hundredths dollars in one year from the date thereof and recorded in book "A," pages 418 and 419, of the records of mortgages in said county, and which said mortgage the said Cody assumes to pay and satisfy in full, and save the said Dawson harmless therefrom as a part of consideration; to have and to hold said premises unto the said Aldus Cody, his heirs and assigns, forever, in fee-simple;
538 and I do hereby covenant with the said Aldus Cody, his heirs and assigns, that I am lawfully seized of said premises; that they are free from incumbrance; that I have good right and lawful authority to sell and convey the same, and I will forever warrant and defend the same against the lawful claims of all persons whomsoever.

Signed this 27th day of April, A. D. 1870.

EDITHA J. DAWSON. [SEAL.]

Witness:

D. G. HULL.

[$10 U. S. Revenue.]

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 27th day of April, A. D. 1870, before me, the subscriber, a notary public duly commissioned and qualified for and residing in said county, personally came Editha J. Dawson, personally to me known to be the identical person whose name is affixed to the foregoing conveyance as grantor, and she acknowledged the same to be her voluntary act and deed.

In witness whereof I have hereunto subscribed my name and affixed my official seal at Lincoln, Nebraska, on the date last above written.

D. G. HULL, [SEAL.]
Notary Public.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

I, J. H. McClay, county clerk of said county, hereby certify that the above and foregoing is a true and correct copy of a warranty deed as appears of record in this office in Deed Record F, at pages 324 and 325.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at the city of Lincoln, this 9th day of November, A. D. 1882.

[SEAL.]

J. H. McCLAY,
County Clerk,
By F. McCLOSKY, *Deputy.*

539 *Objection to Adjournment.*

There being no further evidence now ready to be adduced, but it being intimated by Hall, for the parties Little & o'rs, that there was another witness whom they desired to call—

Burr objected to any further continuance or any further evidence in chief being taken, as the time for the closing of the testimony is fixed by order of court for the 12th of November instant, and this being the 9th the parties Giles & o'rs would have no reasonable opportunity to rebut any evidence in chief, which would be manifestly unfair and unjust.

The further taking of testimony was then adjourned until Saturday evening, the 11th inst., at the office of Messrs. Marquette, Deweese & Hall, in Lincoln, Nebraska, the examiner stating that he would require Friday evening for the making up of his report.

Power of Attorney to Galey. A 7.

On Wednesday, Nov. 8th, the following papers were put in evidence on the part of the parties Giles & o'rs, and copies of them are here inserted at the close of the testimony of the parties, Little & others, the same being put at this place as a matter of convenience.

Q. A. MULLON,
Special Examiner.

BURR: I offer the power of attorney from Editha J. Dawson to S. B. Galey and the revocation of the same—two papers—"Exhibits A 7 and A 8."

Ames objected [as] incompetent, immaterial, and irrelevant.

The following are copies of the two papers:

Know all men by these presents that I, Editha J. Dawson, of the county of Lancaster and State of Nebraska, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, S. B. Galey my true and lawful attorney for me, and in my name, place, and stead, to make, execute, and deliver good
540 and sufficient deeds of general warranty of all lots and blocks in Dawson's addition to South Lincoln; also of all lots and blocks in Capital addition and of all lots and blocks now owned by me in the city of Lincoln, in the county of Lancaster and State of Nebraska, also giving and granting unto my said attorney full power and authority to release and cancel any and all mortgages heretofore or hereafter made and executed to me on the lots or blocks or either of them herein mentioned, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do if personally present, hereby ratifying [and] confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand this 16th day of October, A. D. 1872.

EDITHA J. DAWSON.

Signed and delivered in presence of—
JAS. E. PHILPOTT.

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 15th day of October, A. D. 1872, before me, the undersigned, a notary public duly appointed, commissioned, and qualified for and residing in said county, personally appeared Editha J. Dawson, well known to me to be the identical person who signed and executed the foregoing power of attorney, and acknowledged the said power of attorney to be her voluntary act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and notarial seal the day and year first above written.

[NOTARIAL SEAL.] JAMES E. PHILPOTT,
Notary Public.

Endorsed: Power of attorney. Editha J. Dawson to S. B.
541 Galey. Dated Oct. 16, 1872. Filed for record Oct. 19, 1872, at 9 a. m. Recorded in Book "B," Miscellaneous Record, at pages 86 & 87. R. O. Phillips, cl'k, by R. N. Veedy, deputy.

Revocation of Power. A 8.

STATE OF NEBRASKA, } ss:
Lancaster County, }

Know all men by these presents that whereas I, Editha J. Dawson, in and by my letters of attorney—one bearing date the 16th day of October, 1872, and one bearing date the —— day of ——, 187–, did make, constitute, and appoint Smith B. Galey, as by the aforesaid two letters of attorney may more fully and at large appear.

Know ye by these presents that I, the said Editha J. Dawson, have revoked, countermanded, annulled, and made void, and by these presents do revoke, annul, countermand, and make void, the said letter of attorney and all of them above mentioned and all power and authority thereby given or intended to be given to the said Smith B. Galey.

In witness whereof I have hereunto set my hand and seal this third day of May, 1875.

EDITHA J. DAWSON. [SEAL.]

Signed and sealed in the presence of—
LIONEL C. BURR.

Endorsed: Revocation of power of attorney of Editha J. Dawson to Smith B. Galey [and] L. C. Burr. Filed for record May 4th, 1875, at 10.40 o'clock a. m. Rec. Misc. Records B, page 273. Chg. L. C. Burr 75 cts.

Pursuant to adjournment the taking of testimony in the cause was resumed at the office of Messrs. Marquette, Deweese & Hall, attorneys-at-law, Lincoln, Nebraska, on Saturday evening, November 11th, 1882, the parties Little & o'rs being represented by Mr. Ames and Mr. Hall, and the parties Giles & o'rs by Mr. Burr. Testimony was adduced by the parties Giles & o'rs.

542 *Little as to Tax Sale.*

S. W. LITTLE recalled and examined by BURR:

Q. 1. You are one of the plaintiffs in this case, are you not?
A. I believe so.
Q. 2. Who is F. W. Little?
A. He must be William Francis Little.
Q. 3. What relation is William Francis Little to you?
A. Well, he is about a third cousin of mine.
Q. 4. Where does he reside?
A. He resides in Lincoln.
Q. 5. Is he in your employ?
A. Yes—he is in his own employ rather, so far as that is concerned, in the elevator and mill—one of the partners.
Q. 6. He is your partner at the mill at the depot?
A. Yes, sir.
Q. 7. What is his age?
A. I suppose he is probably about 28 or '9.
Q. 8. Has W. J. Lamb been employed by you and Mr. Alexander, or either of you, or both of you, or others in this suit?
A. I presume he is; I do not know he is particularly with me more than the balance of them.
Q. 9. You and Mr. Alexander have seen him, anyhow, in relation to this suit?
A. Yes.
Q. 10. Did Mr. Lamb advise you to have your relation, W. F. Little, buy in this property at tax sale that you are in possession of?
A. No, sir.
Q. 11. Been no talk between you and him about that?
A. O, yes; I have talked with him.
Q. 12. It was agreed that he purchase the certificate of W. F. Little and then pay the taxes?
A. No, sir.
Q. 13. The intention of Mr. Lamb is to get a tax-title on your lot and Mr. Alexander's lot?
A. No, sir.
Q. 14. Is it agreed that he shall not take out a tax——

WITNESS: That he shall not take out a tax-title?

543 BURR: That W. J. Lamb shall take out a tax-title?

A. Nothing of the sort.
Q. 15. What relation is Mr. Alexander to you?
A. He is no connection at all.
Q. 16. Is Martha Alexander?
A. No, sir.
Q. 17. Was the building occupied by David May as tenant insured in any insurance company?
A. No, sir; I believe, though, there is probably $1,000 insurance; I will not say for certain; I know I have got some of my buildings a small amount of insurance on them; I will not say for certain.

Q. 18. With whom is your insurance done?
A. It is Charley Boggs; if I insured at all it is C. T. Boggs.
Q. 20. No other insurance office would have it?
A. No.
Q. 21. You are not certain whether it is for $1,000 or not?
A. I am not certain I have any.
Q. 22. This is only for $1,000 if it is insured?
A. If I have it.
Q. 23. Is Mr. Alexander's building insured at all?
A. I cannot say.
Q. 24. Have not you and he talked about it?
A. No, sir.
Q. 25. He makes it a rule in these transactions to carry his own insurance?
A. In some respects he does; I could not say he does have insurance; all men don't feel to want that.
Q. 26. But as a rule you and he carry your own insurance?
A. We have usually done so.
Q. 27. Why did you not pay the taxes yourself out of the rents you have received—out of the rents received from May, for the year 1880 and 1881?
A. Well, I have got some taxes I ain't paid—— (BURR: How is that?) A. I have got some taxes that I ain't paid yet.
544 Q. 28. That does [not] answer my question. Why did you not pay the taxes upon this building with the rents you have received from David May?
A. I suppose that is a private matter of my own; I do as I please about that.
Q. 29. Do you refuse to answer?
A. Refuse to answer what? I have answered.
Q. 30. Will you please answer the question why you did not pay the taxes for the years '80 and '81 upon the lot occupied by May out of the rents received from the premises?
A. I might as well pay it out of other money as them rents.
Q. 31. Why did you not pay the taxes on the premises? Please answer the question.
A. Well, I think I have; I told you I had not paid the taxes on some property yet I own.
Q. 32. Will you name some property—you have not paid the tax for the year 1880? Name a single lot.
A. I presume if I was to go through the list I could.
Q. 33. Can you name a single lot on which you have not paid the tax for the year 1880 and allowed the premises to go to sale?
A. Yes, I have got a certificate at home for the redemption of land.
Q. 35. What land was it?
A. It was some land in Illinois.
Q. 36. I mean property in Lancaster county, Nebraska?
A. I do not know whether there is any other or not; I could not say.

Q. 37. Will you please state why you did not pay the taxes for the years 1880 and 1881 upon the premises occupied by May?

WITNESS: Why I did not?

BURR: Yes.

A. I had an object in view in not paying them.

Q. 38. What was your object?

A. I could not go into the particulars of it.

Q. 39. Do you refuse to state your object and state your
545 reasons why? Will you please answer?

A. I have answered quite all that I think would be reasonable to answer.

Q. 40. No, you have not; will you please answer the question? Do you refuse to answer?

A. I have answered all that I think it is necessary for me to answer.

Q. 41. Then you refuse to tell the court why it was and what your object was for getting your relative, W. F. Little, to buy in these taxes?

A. Well, I did not get him.

Q. 42. Will you please state the reasons why you did not pay the taxes? Do you still refuse to answer?

A. I have answered.

Q. 43. No, you have not; I want you either to say you refuse to answer or else answer.

A. I have answered about everything that I know about particularly.

Q. 44. I now ask the examiner to ask the witness if he will answer the question that I have asked him, why he neglected to pay the taxes for the years 1880 and 1881 upon the lot occupied by David May. Do you refuse to answer the master's question?

A. I have answered everything.

Q. 45. Do you swear you have answered the question to the best of your information, knowledge, and belief?

A. I think I have answered everything about as straight——

Q. 46. Do you swear to the court you have answered the question to the best of your information, understanding, and belief?

A. I have to study on that.

BURR: All right; take time to study.

WITNESS: It would take me a week to study, because I have a great many things to look over.

BURR: I expect you are worried with your property. Have you now studied over the matter so you can answer?

A. Not yet; I have to refresh my memory.

Q. 47. Did you talk with W. F. Little before he purchased
546 these premises at tax sale?

A. Not particularly that I recollect.

Q. 48. Will you swear that you did not?

A. Yes.

Q. 49. Did you have any one else talk to him?

A. I suppose there was talk to him or he would not have bought it.

Q. 50. Did you tell any other person to talk to him about it?

A. I shall have to study on that thing.

Q. 51. But this examination will have to close up to-night.

A. I shall have to refresh my memory; I do not know whether I could do it to-night.

Q. 53. You swear your memory is a blank upon this question?

A. I will swear to go into things that way I should have to refresh my memory.

Q. 54. Do you swear this is not the truth?

WITNESS: What is not the truth?

Q. 55. That W. F. Little purchased these premises that you claim in order that he or his assigns of this tax certificate was not to get another title to these premises? Answer "yes" or "no" to that, please.

A. Will you speak—— (BURR: Do you refuse to answer "yes" or "no?" WITNESS: State your question over; then I will tell you. Burr asked the examiner to read the question to the witness, and the examiner accordingly read question 55.) I do not know; I could not say what the arrangement was at the time.

Q. 56. Did you furnish the money to W. F. Little to pay the taxes upon that tax sale.

A. No, sir.

Q. 57. For the year 1880?

A. No, sir.

Q. 58. Do you swear you did not furnish the money on the 6th day of November (this month), to W. J. Lamb, [so] that he could purchase the tax certificate?

A. No; I did not.

Q. 59. You knew that W. J. Lamb had purchased the tax certificate, or had it assigned to him by W. F. Little, did not you?

547 A. No.

Q. 60. You knew that W. F. Little bought the premises at tax sale, did not you?

A. I did not know it—no.

Q. 61. When did you first learn this?

A. I cannot recollect.

Q. 62. Do you want time to study on that—cannot you tell the time when you did not know that?

A. No.

Q. 63. Was it about the time he purchased it?

A. I could not say—I could not say; I do not know as I was here when it was purchased; I do know as I was in the city.

Witness excused.

Testimony was now adduced on the part of the parties Little & o'rs.

Burr Questioned as to a Quit-Claim.

L. C. BURR recalled and examined by HALL:

BURR: I object to any further examination of witnesses-in-chief,

because it is now a quarter after 9 o'clock (here Burr looked at his watch), on the evening of November 11th, 1882, and the time for the closing of this testimony has arrived; and it would be manifestly unfair to keep Mr. Giles from rebutting any testimony now.

Q. 1. You may state whether or not, on or about the 1st day of April, 1880, you executed a quit-claim deed to one Carlos C. Burr to lots 1, 2, 3, and 4, in block 22, and to all of block 49, 48, and 44, in Dawson's addition to South Lincoln.

A. No, sir.

Q. 2. You did not?

A. No, sir; I didn't.

Q. 3. Did you ever execute a deed to anybody to that property, except Ezekiel Giles?

A. I don't believe I did; I executed a deed to one—no, I didn't either; Giles executed a deed himself to one Kinsell, if that is in that property; I don't know whether it is or not.

548 Q. 4. Do you swear positively, Mr. Burr, that you did not execute a deed to one Carlos C. Burr to the property mentioned in the former question?

A. I could explain to you; but I didn't.

Q. 5. You never signed such a deed?

A. Not to my knowledge.

HALL: That is all.

WITNESS: Now, I would say, in explanation to that, that some time—I don't know the exact date—before the conveyance of this property by Burr and Wheeler to Giles, there was an agreement entered into between myself and others, on the one part, and Carlos C. Burr, on the other part, about some property in South Lincoln that he had a deed to from Mrs. Dawson; but no deed was ever executed and delivered or given to Carlos C. Burr.

HALL: That is all.

Witness excused.

Wheeler Questioned as to Quit-Claim Deed.

HILAND H. WHEELER sworn and examined by HALL:

BURR: We again object to the further taking of testimony in chief, because it is after the hour last named, and it is manifestly unjust and unfair, and we have no opportunity to rebut evidence in chief at this late hour and for the further reason that the examiner has notified the complainants and respondents that the evidence must be closed and go to Omaha to-morrow.

Objection to Further Testimony.

Q. 1. Mr. Wheeler, you may state whether or not you ever signed or executed a quit-claim deed to Carlos C. Burr to the property known and described as lots 1, 2, 3, and 4, in block 22, and all of blocks 49, 48, and 44, all of block 48, except lot 10, and all of block
549 44, in Dawson's addition to South Lincoln, on or about the 1st of April, 1880?

BURR: We object as immaterial, incompetent, and not the best evidence; that the mere executing of a deed without its delivery is called for by the question which makes it immaterial and incompetent; that it is necessary to the validity of any deed that it should be delivered, and the question only calls for the execution of a deed and not any delivery, and also for the reasons stated in objecting to any testimony being given at this time.

A. I do not know that I did.

Q. 2. Will you swear that you did not?

A. No, sir.

Q. 3. Don't you know that a deed was executed by Hiland H. Wheeler and Lionel C. Burr and the wife of L. C. Burr to Carlos C. Burr to the property above described, at the date above described. acknowledged before W. R. Kelly, and delivered to Carlos C. Burr?

A. No, sir.

Q. 4. You may state whether or not you know anything about such a deed, or there having been such a deed made, Mr. Wheeler?

BURR: I object [as] incompetent, immaterial, and irrelevant, and not the best evidence, and for the reasons above stated in objecting to any testimony, and because the witness has already answered that he does not know about any such deed.

A. No.

Q. 5. Do you say, Mr. Wheeler, that you do not know of there having been such a deed made?

Burr interposed the same objection as to ques. 4.

A. I do.

Witness excused.

It being now half-past 9 p. m. on the evening of Saturday, November 11th, 1882, the examiner asked counsel on both sides if either party had any further testimony to adduce; and he
550 was told by both parties there was no further testimony to be offered.

The testimony in the cause, as ordered to be taken by the court, here closed.

List of Witnesses.

The following is a list of witnesses who appeared before the examiner to give testimony in the cause, including a witness who was not examined, and did not therefore testify, as well as the names of the witnesses who testified, with (as marked in figures after the names) the number of days the witnesses were in attendance, not excluding the witnesses who are parties in the cause:

J. H. McMurtry, 2 days, not examined.

Witnesses examined on the part of Little & o'rs:

S. W. Little, 2 days.
George P. Tucker, 1 day.
A. P. S. Stuart, 1 day.

W. G. Van Dorn, 1 day.
J. F. Lansing, 2 days.
A. W. Hawley, 1 day.
J. T. Beach, 1 day.
Artemus Roberts, 2 days.
L. C. Burr (who appeared as counsel), 3 days. I claim no fee. L. C. Burr.
H. M. Pickering, 1 day.
J. P. Chipman, 1 day.
J. McManigal, 1 day.
H. D. Hathaway, 1 day.
A. D. Burr, 1 day.
Adam Bax, 1 day.
J. W. Boggs, 2 days.
A. Gebhardt, 1 day.
551 D. T. Cook, 1 day.
S. B. Galey, 1 day.
S. McClay, 1 day.
H. Gerner, 1 day.
Hiland H. Wheeler, 1 day. I claim no fee. H. H. Wheeler, by Burr.

Witnesses on the part of Giles & o'rs:

David May, 1 day.
W. J. Turner, 1 day.
J. F. Lansing, 1 day.
R. S. Grimes, 1 day.
Milton Lane, 1 day.
E. L. Trickey, 1 day.
L. C. Burr (who appeared as counsel), 3 days. I claim no fee. L. C. Burr.
T. P. Kennard, 1 day.
M. L. Hiltner, 1 day.
S. W. Little, 1 day.

The taxing of the costs of the witnesses, on suggestion of the parties is left to the clerk of the circuit court. The nature of the attendance will be readily understood on reference to the index and page in the record corresponding with the index.

O. A M., *Ex'r.*

UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

I, Oscar A. Mullon, special examiner in chancery, appointed in the cause of S. W. Little & o'rs *vs.* Ezekiel Giles & o'rs, bill and cross-bill, by the circuit court of the United States for the District of
552 Nebraska, in the eighth circuit, to take testimony in the above-named cause, do hereby certify that on the days named in the annexed report and at the places therein mentioned and at the times and places named, the parties to the cause being respectively represented by counsel, as fully appears in the report, the

witnesses being each and all, severally and separately, solemnly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters in the cause of them inquired, I took the testimony or depositions of the witnesses named in the report as testifying, severally and respectively, the signing of said depositions made or testimony given by the witnesses, severally, being waived by the counsel of the parties on their respective parts. I also further certify that the whole of the testimony adduced on behalf, respectively, of the several parties to this suit is set forth in the report annexed, as well the oral as the documentary evidence, true copies of all the exhibits being made a part of this report, and that there was no further evidence adduced on the part of either party to the cause than is set forth in the report to which this certificate is annexed.

OSCAR A. MULLON,
Special Examiner in the Cause.

Examiner's charge for all services in writing the testimony, and so forth, on Giles & o'rs, $46.00.
Settled November 14th, 1882.

OSCAR A. MULLON.

Examiner's charge for all services in writing testimony, and so forth, against Little & o'rs, $92.00.
Settled November 14, 1882. O. A. MULLON.

Upon the back of said depositions appear endorsements in words and figures following, to wit: No. 202, F. Little *et al. vs.* Giles *et al.* Filed Nov. 15, 1882. Elmer D. Frank, clerk.

553 Thereupon afterwards, to wit, on the 16th day of November, 1882, answer and cross-petition of Albert L. Dawson *et al.* was filed in said case, which said answer and cross-petition is in words and figures following, to wit:

In the District Court of the 2nd Judicial District of Nebraska in and for Lancaster County.

S. W. LITTLE, SAMUEL ARBUCKLE, D. B. ALEXANDER, A. J. SAWYER, S. G. Owen, Alonzo Assmussen, R. H. Oakley, Sarah J. Purcell, A. P. S. Stewart, and Others, Plaintiffs.

vs.

EZEKIEL GILES, L. C. BURR, H. H. WHEELER, ALBERT L. DAWSON, Carlton Dawson, Infant Heirs of William R. Dawson, Dec'd; Sarah H. Dawson, Widow of said William R. Dawson, Dec'd; M. C. Dawson, Infant Heir of Jacob Dawson, Dec'd; M. L. Dawson, A. A. Knicely, William A. J. Goodwin, and Melita C. D. Tillman, Defendants.

Separate answer and cross-petition of Albert L. Dawson, Carlton Dawson, infant heirs of William R. Dawson, dec'd; Sarah H. Dawson, widow of said William R. Dawson, dec'd; M. C. Dawson, infant heir of Jacob Dawson, dec'd; M. L. Dawson, and Melita C. D. Tillman.

And now come the said defendants, Albert L. Dawson, Carlton

Dawson, infant heirs of William R. Dawson, dec'd; Sarah H. Dawson, widow of said William R. Dawson, dec'd; M. C. Dawson, infant heir of Jacob Dawson, dec'd; M. L. Dawson, and Melita C. D. Tillman, and for their separate answer to so much and such parts of the petition and bill of complaint of said complainants filed herein as they are advised is material or necessary for them to make answer hereto, and for their cross-petition herein praying affirmation —
554 relief, answering, say:

That they admit that on the 15th day of June, A. D. 1869, and thence to his death, Jacob Dawson, the common ancestor of these defendants, was seized in fee-simple and possessed of divers pieces and parcels of real estate, to wit:

The west half of southeast quarter of section nineteen (19), township No. ten (10) north, in range No. seven (7), and the east half of the northeast quarter, and the southeast of the southeast quarter of section No. thirty-five (35), in township No. ten (10) north, in range No. six (6) east, of the sixth principal meridian, in Lancaster county, State of Nebraska; also lots numbered three (3), four (4), five (5), and (6), in block number fifty-four (54), in the then town, now city, of Lincoln, in the county and State aforesaid; and that they further admit that on said last-mentioned day the said Jacob Dawson made and executed this last will and testament, and that said last will and testament is correctly set forth in the bill of complaint of said complainants.

These defendants further admit that Editha J. Dawson, widow of said Jacob Dawson, was named in said last will and testament as the executrix of the estate of said Jacob Dawson, and that on the 22nd day of June, 1869, the said Jacob Dawson died in Lancaster county, in the State of Nebraska.

That said last will and testament of the said Dawson was thereafter duly proved and admitted to probate in the probate court of said county, and letters testamentary thereon were issued out of said court to the said Editha J., who assumed the duties and trust thus imposed. They further admit that at the time of the making of said last will and testament by the said Jacob Dawson, and until his death, he resided with his family in a stone building, which had not been fully completed at the time of his death, but they
555 deny that said building was unfit for habitation; on the contrary, they aver that it was in every way a comfortable and habitable dwelling, and fully suited to the wants and comfort of the family of said Dawson in that particular, and they further deny that it was poorly planned and of no value.

These defendants further admit that said Jacob Dawson left no considerable amount of personal property, but they are not prepared to admit that the statement of amount in plaintiff's bill in that particular is correct, and therefore demand full proof thereof.

They further deny that the real estate of which the said Jacob Dawson died seized was of no greater value than ten thousand dollars, but they allege and aver that it was of much greater value than that sum, and they deny that on the said 15th day of June, 1869, the said Jacob Dawson was indebted to any party or parties in the

sum of five thousand dollars, or in any other sum approximating thereto. They admit that his said indebtedness at that time, and at the time of his death, amounted to a few hundred dollars, but they aver that the same was discharged out of the personal property left and belonging to his said estate; that while they admit that this mode of payment was not in strict compliance with the law governing such matters, they aver and charge that the records of the probate court of said Lancaster county do not show that any debts were presented and allowed by said court against said estate in the usual manner, and that such as did exist were adjusted in the manner indicated, as no authority or power was conferred upon the executrix by said last will and testament to make sale of the real estate belonging to said Editha J. at her own election, for that or any other purpose; and these defendants aver that no debts having been presented and proved and allowed against said estate the necessity for a resort to the real estate for such purpose, to wit, the purpose of payment, did not exist, and no license issued to her out of any court therefor.

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And these defendants deny that any necessity existed for the sale of any *any* of the real estate belonging to said estate for the purpose of building a better home for the accommodation of the family, and that in all sales made by said Editha J. she acted on the theory that she had some kind of estate in said lands conferred by said last will and testament of her deceased husband, which she was at liberty to convey; and these defendants aver and charge that said Editha J. took only a life estate therein, which, by the terms of said will of her said husband, was to terminate upon her marriage with another party, which she since did, as charged and recited in plaintiff's bill of complaint, and which these defendants admit to be true.

These defendants, further answering, say that they are the heirs-at-law and legal representatives of the said Jacob Dawson, and as such are entitled to inherit all the real estate of which he died seized, (only a portion of which is described in plaintiff's bill of complaint) after the termination of the estate bequeathed to said Editha J. Dawson in said last will and testament of the said Jacob Dawson; that of the original heirs of said Jacob Dawson William R. Dawson has since deceased, leaving surviving him the said Carlton Dawson, an infant of tender years, and not under guardianship, and his mother, the widow of said William R. Dawson, and as such heir and legal representative of said William R. Dawson, dec'd, is entitled, under the laws of the State of Nebraska, to inherit the share of his said father in the estate of the said Jacob Dawson, subject to the dower interest of the widow of said William R.

That M. C. Dawson, one of the original heirs of said Jacob Dawson, is also an infant under the age of majority, and not under guardianship, and one of these defendants, for whom, together with the said Carlton Dawson, they pray the court to appoint some suitable person their guardian *ad litem* for the purpose of making their defense in this suit.

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That E. M. Dawson, another of the original heirs of said Jacob Dawson, has since died intestate and without issue, and whose share

of her said father's estate, in consequence, descends in equal parts to her brothers and sisters and the issue of any deceased brother or sister in the manner provided by law.

That of the surviving heirs of said Jacob Dawson and the issue of such as have since deceased, who are entitled to inherit the estate of said Jacob Dawson, the following-named persons, defendants herein, are all that remain, to wit: Albert L. Dawson, Carlton Dawson, infant heir of William R. Dawson, dec'd; Sarah H. Hudson, widow of said William R.; M. S. Dawson, and Melita C. D. Tillman. These defendants, further answering, say that if any advancement was ever made by the said Edith J. Dawson to any of her children it was most from money arising from the sale of her individual estate in the lands belonging to the estate of said Jacob Dawson, and while he bequeathed to her in his said last will and testament, and not from the sale of any interest the said heirs would have in said land after the termination of the life estate therein of the said Edith J. Dawson. These defendants therefore deny that any such advancement was ever made.

Defendants further admit that the said Edith J. Dawson, assuming to be the actual owner of the property of which the said Jacob Dawson died seized, subsequent to the decease of her said husband, caused the east half of the northeast quarter of section No. thirty-five (35), in township ten (10) north, of range No. six (6) east, to be surveyed under the laws of Nebraska in such case made and provided into lots and blocks, which was duly platted and the plat
558 thereof was filed for record in the office of the county clerk of the county of Lancaster, State of Nebraska, on the 15th day of June, 1870, and thereafter the land so described above was known and designated as "Dawson's addition to South Lincoln." But these defendants deny that said Edith J. Dawson sold said lots and blocks for the purpose of raising money with which to discharge the indebtedness of her said husband or to raise money with which to set up her said son, Hampton Dawson, in business, as before that time all the debts of the said Jacob Dawson, including the expenses of his last sickness and subsequent funeral, had been fully paid, as hereinbefore charged and alleged; that all sales made by said Edith J. Dawson of the lots and blocks in said "Dawson's addition to South Lincoln" were made by her upon the hypothesis and assumption that she owned said property in her own right and had an alsolute title thereto in fee-simple, by virtue of the provisions of the last will and testament of her said husband, whereas, in fact and in law, she only had a life estate in said property, determinable on her intermarriage, as expressly provided and stipulated in said last will and testament, under which she claimed title; and having since intermarried with one Pickering the title conveyed by the said Editha J. Dawson to said plaintiffs and parties, under whose — they claim, has ceased and wholly determined, and the right of these defendants to said property, by the provisions of said last will and testament of said Jacob Dawson, has become absolute and perfect.

That these defendants are not advised as to the amount and value

of the improvements put upon said property by said plaintiffs or either of them, and therefore do not either admit or deny their allegations in that particular, as it is wholly unimportant, touching the present inquiry, what amount of improvements they or either of them may have put upon said property as they accepted
559 the conveyance made by said Edith J. Dawson with a full knowledge of her title and interest in said property, and put said improvements thereon, if any, at their own risk and peril, and these defendants therefore deny that they have any legal or equitable right to call on these defendants to reimburse them or either of them therefor. They further admit that the list of parties plaintiffs holding claims to said several tracts, parcels, and lots of lands aforesaid contained in their said petition and bill of complaint is correct as far as it goes, but allege that there are other property belonging to said estate of Jacob Dawson and now owned by these defendants and claimed by other parties not named in said bill, whose names, when discovered, these defendants pray may be added as parties plaintiffs or defendants in this cause.

And these defendants, for a caoss-demand in this suit, and to the end that the rights of the defendants among themselves may be adjusted touching the subject-matter of this suit, complain and allege that after the intermarriage of the said Edith J. Dawson with the said Pickering, and before these defendants became aware of their rights under said last will and testament of the said Jacob Dawson, two of their codefendants, to wit, Lionel C. Burr and H. H. Wheeler, who were and are attorneys and counsellors at law in the several courts of this State, approached these defendants (answering separately herein) and informed them, as such attorneys and counsellors aforesaid, that they, as the heirs-at-law and legal representatives of Jacob Dawson, were the rightful owners of all the real estate of which the said Jacob Dawson died seized, and that to enforce said right and obtain a recovery of said property from the present occupants and claimants thereof it would be necessary for them (these defend-
560 ants) to convey all of said property to them, the said Burr and Wheeler. And these defendants, heirs of said Jacob Dawson, dec'd, being wholly and entirely ignorant of their rights in the premises and relying upon the representations of said Burr and Wheeler in that behalf, and according to their demands in the premises, did on or about the 15th day of September, 1879, together with the wives of such of said heirs as were married, execute and deliver to said Lionel C. Burr and H. H. Wheeler a quit-claim deed to all of said property, but without covenants of warranty, and signed by all the heirs of said Jacob Dawson except Albert L. Dawson and Melita C. D. Tillman, who have, however, since conveyed by like deed to said Burr and Wheeler and Ezekiel Giles at their instance and request, and these defendants allege that while the consideration mentioned in said deed is $75,000, it was in fact made without any consideration except that which is expressed in a certain *contemporaneous* and champertous agreement hereinafter more fully set out and at large in this cross-petition.

They further allege and charge that said deed of conveyance from

these defendants to said Burr and Wheeler and to the said Giles were all obtained by false and fraudulent representations made to them by said Burr and Wheeler to the effect that without such conveyances nothing whatever could be done to save said property to the rightful owners thereof; that a conveyance by them was an absolute necessity, and to furnish a cure for the fraud intended the said Burr & Wheeler agreed in writing that when they, the said Burr & Wheeler, should come into the possession and be seized in fee-simple absolute of the estate or any part thereof conveyed by said heirs, then they would re-quit-claim to said heirs the one undivided one-third part thereof, a true copy of which said agreement here follows, and is made a part of this cross-petition, to wit:

"This instrument, made and entered into this tenth day
561 of November, 1879, between Lionel C. Burr and Hiland H. Wheeler, both of Lancaster county, Nebraska, party of the first part, and William R. Dawson, Albert Dawson, Minnie Dawson, Melita Dawson, and Evaline Dawson Knicely, heirs-at-law of Jacob Dawson, deceased, parties of the second part, witnesseth: That the *first* parties of the first part do hereby agree with the said parties of the second part that whenever the said parties of the first part shall come into the possession and be seized in fee-simple absolute of the estate, or any part thereof, conveyed by said parties of the second part to said parties of the first part, then said parties of the first part shall quit-claim to said parties of the second part the one-third undivided interest which they, as tenants in fee-simple, have in said premises, or, at the election of the said parties of the first part, pay to the said parties of the second part the value of said undivided one-third interest of said estate in cash.

"In witness whereof the said parties have hereunto set their hands and seals the day and year above first written. *And if any money comes into hands of, or by way of settlement of suits, one-third thereof we will pay to parties of* [the] *second part after deducting actual expenses.*

"L. C. BURR.
"HILAND H. WHEELER.

"Witness to signatures:
"H. P. HEMP."

And these defendants say that all that portion of said agreement which is underscored in the foregoing copy was written therein long after its original execution and delivery by some party directed to do so by said Burr & Wheeler, as these defendants are informed and believe, and without the knowledge, consent, or concurrence of any of these defendants.

These defendants further aver and charge that said deeds
562 so above described from these defendants to said Burr & Wheeler were not only fraudulently obtained by gross deception and misrepresentations made by said Burr and Wheeler for that purpose, but were founded upon and formed a part of the immoral, unjust, and champertous contract above set out, and has been used, and was intended to be used, as a means to an illegal, inequitable, and grossly unjust end, both as against these defendants and

to all parties having any interest in the estate of said Jacob Dawson, deceased.

And these defendants charge and allege that said Burr & Wheeler have, in pursuance of an original preconcocted intention to swindle and defraud these defendants out of their just rights in the estate of said Jacob Dawson, colluded and confederated with divers persons claiming parts of the said Dawson's estate to convey them the parts thereof claimed by them for a mere nominal sum, and in some cases for some obligation which the said Burr was under by reason of former arrangements, by which said Burr had pledged himself to see that said parties were not disturbed in their title to the Dawson property, obtained through and by the efforts of said Burr, saying at the same time that the heirs could not help themselves, as he and Wheeler held the title to the whole property and could do as they pleased with it.

That as an evidence that they intended to do as they please with the property of these defendants they allege and charge that said Burr and Wheeler have made a deed to the whole of the real estate conveyed by these defendants to them to one Ezekiel Giles, a resident of the State of Iowa, and a person who is financially worthless; that the only consideration for said last-mentioned conveyance is the fact that said Giles is the father-in-law of said L. C. Burr, and his mere tool, to be used for any purpose promotive of the common design to override these defendants.

563 They further allege that said Giles has never paid one dollar for said property, and is financially unable to pay anything for it, nor was it intended or expected by said Burr and Wheeler that he should do so.

Wherefore these defendants pray that said Burr and Wheeler may be required to answer to this cross-petition, and that upon the final hearing of this cause, as between these defendants and the said Burr and Wheeler and their grantee, Ezekiel Giles, whom they pray may also be compelled to answer hereto, the court may render a decree annulling and cancelling the deeds from these defendants to the said L. C. Burr and H. H. Wheeler and from the said Burr and Wheeler to the said Ezekiel Giles for the property in controversy in this suit; and also to set aside a deed to same property made by Melita C. D. Tillman to said Ezekiel Giles; also to cause all contracts between these defendants and said Burr and Wheeler to be brought into court, and by it duly cancelled, and that the court, by its decree, restore these defendants to their original rights with reference to the property of which their ancestor, Jacob Dawson, died seized, and that they be hence relieved from any embarrassment in the enforcement of their rights by any claim of title on the part of said Burr and Wheeler.

And these defendants further pray that upon a final hearing of this whole case as respects the claims of said plaintiffs *that* the court will render its decree declaring them the rightful owners, to wit, these defendants, of all the property involved in this suit, and whi*le*, by the terms of the last will and testament of said Jacob

Dawson, belongs wholly to them, the life estate of the widow having been terminated by her marriage with said Pickering.

And that the court further decree that said plaintiffs take nothing for any improvements they or any of them may have put on said property, and grant to these defendants such other and
564 further relief as equity and good conscience may require, and they in duty bound will ever pray.

ISHAM REAVIS,
Solicitor for Defendants, the Heirs of Jacob Dawson, Dec'd.

THE STATE OF NEBRASKA, } ss:
County of Otoe, }

Albert L. Dawson, of lawful age, being duly sworn, on oath states that he is one of the heirs-at-law and legal representatives of Jacob Dawson, deceased, and one of the defendants in this case and one of the parties making the foregoing separate answer; that he has heard the foregoing answer read over and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to all such matters he believes them to be true; and further he saith not.

ALBERT L. DAWSON.

Sworn to before me and subscribed in my presence this 20th day of Feb'y, 1882.

[SEAL.] EDWIN J. MURKIN,
Notary Public.

Endorsed: S. W. Little *et al. vs.* Ezekiel Giles *et al.* Separate answer of heirs of Dawson and cross-petition praying affirmative relief. Filed Feb. 21, 1882. A. D. Burr, cl'k D. C. Isham Reavis, solicitor for defendants, heirs of Jacob Dawson.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, A. D. Burr, clerk D. C. in and for said county, do hereby certify that the above and foregoing is a true and correct copy of answer and cross-petition in cause wherein S. W. Little *et al.* are plaintiffs, and Ezekiel Giles *et al.* are defendants, as same appears of file in my office.

In witness whereof I have hereunto set my hand and offi-
565 cial seal at Lincoln this 21st day of Feb'y, 1882.

[SEAL.] A. D. BURR, *Cl'k D. C.*

Transcript fee, $5.00, paid by def'ts' atty.

Upon the back of said answer and cross-petition appear endorsements in words and figures following, to wit: No. 202, F. Samuel W. Little *et als. vs.* Ezekiel Giles *et al.* Answer and cross-petition of Albert L. Dawson *et al.* Transcript. Filed Nov. 16, 1882. Elmer D. Frank, clerk. Isham Reavis, for def'ts, Dawson.

Thereupon afterwards, to wit, on the 16th day of November, 1882,

motion for leave to file amendments to bill was filed in said case, which said motion is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

SAMUEL W. LITTLE and Others, Complainants,
vs.
EZEKIEL GILES, Respondent.

Come now the above-named complainants and move the court here for leave to file an amendment to their bill of complaint in the manner set forth in the affidavit of Samuel W. Little on file herein.

T. M. MARQUETTE,
HARWOOD AND AMES,
Plaintiffs' Att'ys

Upon the back of said motion appear endorsements in words and figures following, to wit: No. 202, F. Samuel W. Little *et al. vs.* Ezekiel Giles. Motion for leave to file amendments to bill. Filed Nov. 16, 1882. Elmer D. Frank, clerk. T. M. Marquette, Harwood and Ames, for complainants.

Thereupon afterwards, to wit, on the 16th day of November, 1882, motion for a receiver was filed in said case, which said motion is in words and figures following, to wit:

566 *Motion for Receiver.*

In the United States Circuit Court for the District of Nebraska.

S. W. LITTLE *et al. vs.* EZEKIEL GILES.

Comes now the said E. Giles, and moves the court here to appoint a receiver to take charge, control, and possession of the estates here in controversy, to collect the rents, issues, and profits thereof, and pay the taxes due or to become due against said premises, and to redeem from tax sales or sale the premises occupied by S. W. Little and his tenant, David May; also the premises occupied by Martha Alexander and her tenants, J. B. Trickey & Co., and redeem from tax sales any and all of the premises here in controversy that may have been sold for taxes, and to insure the said premises in some responsible insurance company, and to do any and all acts and things necessary in the premises for the following reasons, to wit:

1. Because Giles has established his title at law to the estates here in controversy.

2. Because the statute of limitation will run against Giles' right to an action against the various plaintiffs herein to recover the rents, issues, and profits from said estates before this action can finally be decided and determined.

3. Because the improvements & buildings upon a large portion of the premises here in suit are not insured, and cannot be safely insured, and are liable to be destroyed by fire and otherwise.

4. Because said Giles has shown strong grounds of title to said

estates, with reasonable probability that he will ultimately recover possession thereof.

5. There is imminent danger to a large portion, if not all, of said property, not only the rents, profits, and issues, but the title to the same in this, to wit:

567 The premises occupied by S. W. Little and Martha Alexander are not insured; and further, about the 15th day of November, 1881, one W. F. Little, the relative and partner in business of said S. W. Little, bought at tax sale, from the county treasurer of Lancaster county, Nebraska, the two pieces of real estate lastly named, for the year 1880; and about the 6th day of November, 1882, Walter J Lamb, one of the attorneys for plaintiffs, paid the taxes against said premises, under said tax certificate, as holder thereof, for the year 1881, and for the said two years the amount thereof is about the sum of $890.00, all of which will fully and at large appear from the evidence filed in this action.

6. Various and vexatious and prolonged suits at law and equity will of necessity grow out of the sale of said estate for taxes unless this court appoints a receiver to collect the rents, issues, and profits therefrom and pay the same.

7. Because a large amount and number of plaintiffs are insolvent, and this defendant is without remedy unless the court appoints a receiver herein.

8. Because there is immediate danger *both* to the rents, issues, and profits, but of the title to said estate, because of the mismanagements and insolvency of plaintiffs, or a large number of them.

9. Because upon the pleadings, records, and proceedings in this action, upon which this action is based, as well as upon the several cases at law in this court, of Giles *vs.* Little *et al.*, and against Owen *et al.*, and against Alexander *et al.*, and against Stuart *et al.*, it is fairly shown that a receiver ought to be appointed by the court to protect said estates and the rights of all parties concerned, and particularly the rights of defendants.

L. C. BURR,
Att'y for Giles.

568 Upon the back of said motion for a receiver appear endorsements in words and figures following, to wit: No. 202, F. Little *vs.* Giles. In equity. Motion for a receiver. Filed Nov. 16, 1882. Elmer D. Frank, clerk. L. C. Burr, for Giles.

Thereupon, afterwards, to wit, on the 27th day of November, 1882, a stipulation was filed in said case, which said stipulation is in words and figures following, to wit:

Stipulation.

In the Circuit Court of the United States for the District of Nebraska.

S. W. LITTLE *et al. vs.* EZEKIEL GILES.

It is stipulated and agreed by and between the said S. W. Little *et al.* and said Ezekiel Giles that the proposed amendment to peti-

tion or bill may be filed in said action on this Monday, the 27th day of November, 1882, and that the said Giles will file his answer thereto instanter, and that said Little shall file their replication thereunto immediately, and that argument on the motion filed in this case for a receiver be postponed until final argument of this case, at this present term of court, and by Saturday, the 2nd day of December, 1882, said Little *et al.* shall finish and complete taking proof on said amended bill on their side before Examiner J. S. Dales, Esq., and said Giles shall close his proof on or before Wednesday, the 6th day of December, 1882, and that said cause shall stand for trial on the regular call of the equity docket, this present term of court, as soon as the court can reach the same.

November 27th, 1882.

EZEKIEL GILES,
By L. C. BURR, *His Atty.*
HARWOOD & AMES,
T. M. MARQUETT,
Att'ys for Pl'ffs.

Upon the back of said stipulation appear endorsements in
569 words and figures following to wit: No. 202, F. S. W. Little *et al. vs.* Ezekiel Giles. Stipulation. Filed Nov. 27, 1882. Elmer D. Frank, clerk. L. C. Burr, for Giles.

Thereupon afterwards, to wit, on the 27th day of November, 1882, an amended bill was filed in said case, which said amended bill is in words and figures following, to wit:

To the honorable the judges of the circuit court of the United States for the district of Nebraska. In equity:

S. W. Little, Samuel Arbuckle, D. B. Alexander, A. J. Sawyer, S. G. Owen, Lorenzo Assmessen, R. H. Oakley, Sarah J. Purcell, A. P. S. Stewart, Thomas R. C. Clark, Mary A. McElhinney, D. C. Kinsell, Hannah Selwood, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Allen W. Hawley, A. F. Lewis, Samuel Arthur, G. F. Thornton, Sarah Cummings, William H. Rundell, Jacob Freedman, O. P. Austin, J. A. Buckstaff, Mary T. McNair, George D. Camp, Wilbur F. Kellogg, Elizabeth N. Chace, Sarah A. Gable, Samuel Aughey, Clarinda A. Bunstead, Elizabeth Paden, Martha E. Snowden, Thomas Woods, Joseph S. Hoagland, Eliza W. Pillsbury, Henry V. Hoagland, W. S. Garrison, C. L. Hoofer, S. E. Story, V. E. Farmer, Josephine St. Louis, Frank J. Wassika, Ella N. Miller, John H. Schwabold, Helen Weber, Samuel Henderson, Christine Bohlman, Joseph Richardson, Patrick Lyons, W. Sanford Gee, Allen Cogswell, M. B. Cheeney, Mary E. Maloney, Emma A. Beach, Barret F. Loath, Francis D. Howell, L. S. Howell, Samuel D. Bacon, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Jacob Freedman, Samuel T. English, Guy A. Barnum, H. O. Snow, George Warden, D. D. Muir, George W. Severance, Rody A. Prindle, Mina W. Brown, W. J. Van Dorn, and G. W. Lashus, whose bill of complaint has been filed herein against Ezekiel Giles, L. C. Burr, H. H. Wheeler, Albert L. Dawson; Carleton Dawson, infant heir of

William R. Dawson, deceased; M. C. Dawson, infant heir of
570 Jacob B. Dawson, deceased; M. L. Dawson, A. A. Kincely, William A. J. Gooden, and Melita S. C. Tilden, bring now this their amended and supplemental bill of complaint against the said defendants.

And thereupon your orators, further complaining, say:

That at the date the said deed was made by the heirs of Jacob Dawson to the defendants, Burr & Wheeler, which deed is for further particulars hereto referred, the same was executed by five only of the heirs of Jacob Dawson who were living at the time of his decease, John Hampton Dawson, one of said heirs, having previously thereto died leaving no issue him surviving; that said deed was executed and delivered without any consideration whatever; that it is true that at the time of the making of said deed, and as a pretended consideration therefor, the said Burr and Wheeler executed to said heirs and their grantors the following agreement, to wit:

Copy of Agreement.

Witnesseth, That the said parties of the first part do hereby agree with the said parties of the second part that whenever the said parties of the first part shall come into possession and be seized in fee-simple absolute of the estate, or any part thereof, conveyed by said parties of the second part to the said parties of the first part, then said parties of the first part shall quit-claim to said parties of the second part the one-third undivided interest which they as tenants in fee-simple have in said premises, or, at the election of said parties of first part, pay to said parties of the second part the value of said undivided one-third interest in said estate in cash.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

And if any money comes into the hands of us by way of
571 settlement of suits one-third thereof we will pay to the parties of the second part, after deducting the actual expenses.

(Signed) L. C. BURR.
HILAND H. WHEELER.

Witness the signature—
H. P. KEMP.

Plaintiffs aver that that the said agreement was the sole consideration or pretended consideration for said deed which passed from Burr & Wheeler to the said heirs of Jacob Dawson.

That at the time said conveyance was made three of the said heirs of Jacob Dawson, to wit, Minnie S. Dawson, Melita C. Dawson, and Evaline Dawson Knicely, were minors, under the age of eighteen years, and with the exception of Evaline Dawson Knicely were unmarried; that since the execution of said deed and agreement, to wit, on or about the 20th day of February, 1882, the said Minnie S. Dawson and Melita C. Dawson have disaffirmed their said act of conveyance, and now maintain their title and interest in and to their undivided share of said estate, and by a pleading filed in this cause on said date prayed that said conveyance, together with said conveyance

by Burr and Wheeler to the said Giles, may be set aside; and plaintiff aver that by the disaffirmation by the said minors aforesaid the said pretended deeds have become and are void and of no effect, and at all events, as to three-fifths (3/5) of the property in dispute herein, neither the defendants Burr and Wheeler nor the said Giles have or can have any interest or claim therein whatever, but that the only pretended claim or right and color of title to the same now existing in any of the said defendants is in the said persons who were minors at the date of said deed; and plaintiffs aver that at the date of said disaffirmation said minors had arrived at the age of majority.

Plaintiffs therefore submit that the said Melita C. Dawson and Minnie S. Dawson are not only proper but absolutely necessary parties in this said suit or controversy, and that the issue is not wholly between Giles on the one hand and these plaintiffs on the other.

572

Plaintiffs further aver that since the date of said conveyance, or pretended conveyance, by the said heirs of Jacob Dawson to Burr and Wheeler, and prior to the 20th day of February, 1882, the said William R. Dawson and the said Evaline Dawson Knicely became deceased, the said William R. Dawson leaving issue him surviving, Carleton Dawson, and the said Evaline D. Knicely leaving her surviving no issue.

And the plaintiffs further say that on the said 20th day of February, 1882, the said Albert L. Dawson, together with the said Carleton Dawson, minor heir of William R. Dawson, deceased, joined in said pleading filed herein by said Melita C. and Minnie S., which pleading charges the fact to be that the said deed and conveyance by the said Dawson's heirs to the said Burr and Wheeler was obtained from the grantors therein through and by means of misrepresentations and fraud on the part of said Burr and Wheeler, and that the same was made by the said grantors to the said Burr & Wheeler with the sole and express intent to enable the said Burr & Wheeler to prosecute actions in their own name for the recovery of the property thereinafter described for the benefit of said grantors, and further avering that the said conveyance by the said Burr & Wheeler to the said Giles was made without the knowledge and privity or consent of the said grantors or any of them, and in fraud of their rights under said contract and without any consideration, and that the said Giles had knowledge of the rights of the said grantors in the premises at and before the time of the said conveyance to him.

And the plaintiffs submit that by virtue of said agreement heretofore referred to and set out said deed from the said Dawsons to the said Burr & Wheeler created nothing further or greater than a personal trust in said Burr & Wheeler, which they had no right or power to convey or delegate to the said Giles or any other person.

573

Plaintiffs further aver that the said John Hampton Dawson, one of the heirs of the said Jacob Dawson, deceased, after he had arrived at the age of discretion, and had attained his majority, and after the decease of said Jacob Dawson, sold and conveyed, as the

attorney-in-fact of the said Editha J. Dawson, the following tracts of land for their fair and full value, to wit: Lots No. three (3) and four (4), in block No. forty-seven (47), in Dawson's addition to South Lincoln; lots Nos. seven (7), eight (8), & nine (9), in block No. thirty-one (31), in Dawson's addition to South Lincoln, in the county of Lancaster and State of Nebraska; lots Nos. one, two, and three (1, 2, & 3), in block No. thirty-eight (38), in Dawson's addition to South Lincoln; block No. thirty-nine (39) in Dawson's addition to South Lincoln, in the county of Lancaster and State of Nebraska; block No. forty-one (41) in Dawson's addition to South Lincoln, in the county of Lancaster, State of Nebraska; block No. (33) thirty-three, in [Dawson's] addition to South Lincoln; lots four, five, and six (4, 5, & 6), in block No. thirty-eight (38), in Dawson's addition to South Lincoln; block No. thirty-two in Dawson's addition to South Lincoln; lot number four (4), in block number thirty-one (31), in Dawson's addition to South Lincoln, all in the county of Lancaster, State of Nebraska.

And plaintiffs aver that at and before the making of said sale and conveyance as aforesaid the said John Hampton Dawson stated and represented to the several purchasers of the said tracts of land respectively, and to the public generally, that the said Editha J. Dawson had a good and perfect title in fee-simple to all and every of the same, and thereby made, executed, and delivered to the respective purchasers of the tracts of land purchased by them as aforesaid, as
574 the attorney-in-fact of the said Editha J. Dawson, under a certain written power of attorney to him executed by her, deeds of conveyance therefor, containing full covenants of title and of seizure, and of right to convey, and of general warranty, upon which statements and representations and covenants the said purchasers, and every of them, relied, believing the same to be true.

Plaintiffs therefore submit, as to the interest of the said John Hampton Dawson in and to any of the lands here in dispute as the heir of said Jacob Dawson, deceased, the said John Hampton Dawson in his lifetime, and the other aforesaid heirs of the said Jacob Dawson, deceased, and the issue of said heirs, and the said Burr & Wheeler, and said Ezekiel Giles are all and every of them estopped from setting up or pretending to have any interest or claim in and to any of the lands so by the said John Hampton Dawson sold and conveyed.

And plaintiffs further say that the said John Hampton Dawson, subsequently to the decease of said Jacob Dawson, sold and caused to be sold by the said Editha J. Dawson large tracts and portions of land here in controversy, and received therefor the sum of about $9,000, which sum was taken and converted by the said John Hampton Dawson to his own personal use as an advance and satisfaction of so much of his interest and expectancy as the heir both of the said Jacob Dawson, deceased, and of the said Editha J. Dawson.

Plaintiffs further submit, as to all of said land and real estate the proceeds of the sale of which was so converted by said John Hampton Dawson to his own use, the said John Hampton Dawson in his lifetime and all the heirs of the said Jacob Dawson, deceased, and

the issue of such, the said heirs as are now deceased, and the said Burr & Wheeler and the said Giles are and ought to be estopped from setting up and pretending to have any claim or title in or to the same, or any part thereof.

575 Plaintiffs further say that a large and considerable portion of the said land herein [in] controversy belonging to the said Jacob Dawson, now dead, were sold subsequently to the 1st day of July, 1874, by the defendant, L. C. Burr, acting on behalf of said Editha J. Dawson, as her agent, and by and with the advice, consent, and co-operation of the said William R. Dawson, and that the said Lionel C. Burr and William R. Dawson represented and stated to purchasers of each of said tracts of land, respectively, and the public generally, at and before the times of said sales aforesaid, that the said Editha J. Dawson had a good and perfect title to the same in fee-simple, upon which said statements and representations the said purchasers implicitly relied, and upon the inducement thereof purchased their said several tracts and lots of said land and paid the purchase price for the same, respectively, to the said Burr and the said William R. Dawson and went into possession of the same and made vast and valuable improvements thereon; and that the said several tracts, and a particular description thereof, so sold by the said John Hampton Dawson and by the said L. C. Burr and William R. Dawson will more particularly appear by reference to proofs on file in this case, reference to which the plaintiffs pray may be had if necessary.

Plaintiffs further say that at the time the said L. C. Burr and H. H. Wheeler made their said pretended conveyance of the property in controversy to Ezekiel Giles, nor at any time before or subsequent thereto, the said Giles did not pay, or promise to pay, to the said Burr & Wheeler, or either of them, any consideration therefor whatever, nor has any consideration therefor ever been received or contracted for by the said Burr and Wheeler, or either of them, but that as the sole consideration for said conveyance the said Ezekiel Giles executed and delivered to the said Burr & Wheeler the following agreement in writing, to wit:

576 This instrument, made and entered into this 27th day of April, 1880, between Ezekiel Giles, of Clay county, Iowa, party of the first part, and Hiland H. Wheeler and Lionel C. Burr, of Lincoln, Lancaster county, Nebraska, parties of the second part, witnesseth: That the said parties of the second part, by deed of even date herewith, have conveyed to the said party of the first part certain lands and premises in Lancaster and Otoe county, Nebraska, which were conveyed to the said second parties by the heirs of one Jacob Dawson, deceased, reference to which said deed is herein had for a more particular description of said land and premises, which said lands and premises have not yet been reduced to possession by said second parties, but are claimed by various persons. Now it is mutually covenanted that the said parties of the second part shall, and they hereby agree to, prosecute all suits against said claimants at the expense of said first party for the possession of said premises, and to render or procure all necessary legal assistance

for such purpose, and the party of the first part, in consideration thereof, and of the conveyance to him aforesaid, hereby agrees to pay all the expenses of such suits as may be necessary as aforesaid; and in the event of final success of any such suits to pay the said Hiland H. Wheeler and the said Lionel C. Burr the value of one-third of said lands and premises the possession of which is so recovered, and the said party of the first part does also agree to assume and discharge and pay off all indebtedness arising or to arise by reason of a certain contract dated November 10, 1879, between said parties of the second part and the afore-referred-to heirs of said Jacob Dawson, and to save harmless said parties of the second part therefrom.

Reference to said contract for a more particular description of the covenants therein contained is herein had.

577 In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

EZEKIEL GILES. [SEAL.]
L. C. BURR. [SEAL.]
HILAND H. WHEELER. [SEAL.]

Signed, sealed, and delivered in presence of—
CHARLES P. GILES.

Plaintiffs therefore submit under advice of counsel that the said last-named deed, together with the said agreement, do not purport to convey from the said Burr & Wheeler to the said Giles any interest or estate in or to said land, or any part thereof, and that said fact is made further to appear by the circumstances that on the 3 day of July, 1880, the said Ezekiel Giles, together with his wife, Lydia Giles, executed and delivered to the said L. C. Burr a certain power of attorney in words and figures following, to wit:

Know all men by these presents that we, Ezekiel Giles and Lydia Giles, wife of said Ezekiel Giles, both of Spencer, county of Clay, in the State of Iowa, have made, authorized, and appointed, and by these presents do make, authorize, and appoint Lionel C. Burr, of Lincoln, Lancaster county, Nebraska, our attorney for us, and each of us, in our names to enter into and take possession of all such lands, tenements, and real estate whatsoever in the counties of Lancaster and Otoe, Nebraska, whereof either of us now or hereafter may be by any way or means entitled to or interested in.

Also for us in our names to commence and prosecute any action at law or in equity to recover possession of said real estate, and to compromise any and all claims held by any and all persons against said real estate as in his judgment he shall deem meet.

578 Also for us and in our names to grant, bargain, sell, lease, mortgage, or otherwise dispose of said premises, and for us and in our names to make, deliver, or receive good and sufficient deeds, leases, conveyances, and all other instruments necessary to express or carry out the powers herein granted to said Lionel C. Burr; and we do hereby empower said Lionel C. Burr as our attorney and in our names to manage and control said real estate as fully

as we or either of us could if personally present, hereby ratifying and confirming whatever our said attorney may do or cause to be done in and about said real estate by authority of these presents.

In witness whereof we have hereunto set our hands and seals this 3rd day of July, 1880.

EZEKIEL GILES. [SEAL.]
LYDIA GILES. [SEAL.]

Signed, sealed, and delivered in the presence of—
M. E. GRIFFIN.

Plaintiffs therefore submit that the said surviving heirs of Jacob Dawson and the said Carleton Dawson and the said Burr and Wheeler are the sole and only parties in interest in this action adverse to these plaintiffs.

Plaintiffs further aver that the whole money consideration received by the said Editha J. Dawson for the sale and conveyance of the real estate in controversy, situated in block numbered 54, Lincoln, Nebr., was used by said Editha J. Dawson and by her agent and attorney under her direction for the payment of the debts of the said Jacob Dawson, deceased, amounting to the sum of about $5,000 and upwards, which existed against him at the time of his death and at the time of the said sales and conveyances, and for further purpose of building a suitable dwelling-house for the habitation of the said Editha J. Dawson and her children, the said heirs of said Jacob Dawson, deceased.

And plaintiffs submit, under advice of counsel, that as to
579 said last-described real estate each and all of said heirs of the said Jacob Dawson and all and every person or persons claiming by, through, and under them or any of them are estopped from setting up or pretending to have any interest, right, or title in and to the same, or any part thereof.

Plaintiffs further aver that the said William R. Dawson, Albert L. Dawson, Melita C. Dawson, and Minnie S. Dawson, Editha J. Dawson, L. C. Burr, and Hiland H. Wheeler, further for the purposes of carrying into effect their said wicked and unlawful conspiracy, further conspired together to cause the said Editha J. Dawson to marry, and that in pursuance with the said conspiracy said Editha J. Dawson did, on or about the — day ——, 1879, intermarry with one H. N. Pickering; and that further for the purpose of carrying said conspiracy into effect, the day for said marriage having been fixed by agreement between the said Pickering and Editha J. Dawson, the same was, at the instance of the said William R. Dawson, Albert L. Dawson, and the said Burr and Wheeler, postponed for an interval of about two weeks for the purpose of affording the opportunity for the execution of the said agreement between the said Dawson heirs and the said Burr & Wheeler, and previously thereto, by the consent and connivance of the said Editha J. Dawson and the said Dawson's heirs and the said Burr, the said marriage has been postponed from time to time during an interval [of] more than two years, for the purpose of enabling said Editha J. Dawson and

said L. C. Burr and the said William R. Dawson to sell and dispose of the residue and remainder unsold of the said lands and lots in controversy belonging to the estate of the said Jacob Dawson, deceased; and that as a further evidence of such conspiracy the said Albert L. Dawson and William R. Dawson, after the consumation of said marriage, by force and violence did compel the said Pickering to separate from, and thence continue thereafter to live separate from, the said Editha J. Dawson, and that at the time of the separation, and immediately prior thereto, *that* the said William R. Dawson distinctly avowed that the purpose of said marriage had been to enable the said heirs of said Jacob Dawson to recover back the possession of all the said real estate belonging to the said Jacob Dawson so by the said several parties at the said several times sold as aforesaid.

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Plaintiffs further aver that on the 1st day of April, A. D. 1880, the said Hiland H. Wheeler and Lionel C. Burr and Aldana Burr, his wife, by deed of conveyance bearing that date, duly executed and acknowledged and delivered to one Carlos C. Burr, or attempted or pretended to convey to said Carlos C. Burr, but without any consideration therefor, the following-described lands, to wit: Lot- numbered one (1), two (2), three (3), and four (4), in block numbered twenty-two (22); also all of block numbered forty-nine (49); also all of block numbered forty-eight (48), except lot numbered ten (10); also all of block numbered forty-four (44), in Dawson's addition to South Lincoln, being part of the land here in controversy, and lots numbered nine (9), ten (10), eleven (11), and twelve (12), in said block numbered forty-four (44); also lots numbered one (1), three (3), four (4), ten (10), eleven (11), and twelve (12), in said block numbered forty-eight (48); and also lots numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), and (8), in said block numbered forty-nine (49), now belong in severalty to divers of these plaintiffs, and the plaintiffs aver that the said deed to the said Carlos C. Burr was a secret, and the clandestine conveyance made for the purpose further to cloud and encumber the titles of said lands in the plaintiffs owning the same; that said deed has never been made of record, but, as [a] prearranged agreement between said L. C. Burr and H. H. Wheeler and the said Carlos C. Burr, who is the brother of said L. C. Burr, has been at all times concealed by the said Carlos C. Burr, and the existence thereof first came to the knowledge of these plaintiffs, or any of them, on the 11th day of November, A. D. 1882, and these plaintiffs submit under advice of counsel that as to the lands described in said deed neither the said L. C. Burr and H. H. Wheeler nor the said Giles have or can claim to have any title or interest in or to the same, and the plaintiffs submit that the said Carlos C. Burr ought to be made a party defendant herein, and therefore pray that the most gracious writ of subpœna may issue, and that the said Carlos C. Burr may be required to make full and true answer, but not under oath (answer under oath being hereby expressly waived) touching the several matters and things herein alleged and complained of as to him.

581

Wherefore plaintiffs submit that for the reasons aforesaid, the sev-

eral facts and circumstances, all of which have at all times been well known to each and all of the defendants herein, that the said heirs of Jacob Dawson, deceased, each and all of them, and all persons claiming through or under them, or any of them, are and ought to be estopped from setting up or claiming any right, title, interest, or estate in and to the land in controversy in this action, or any part of the same.

T. M. MARQUETT,
HARWOOD AND AMES,
Att'y- for Pl'ff-.

Upon the back of said amended bill appear endorsements in words and figures following, to wit: No. 202, F. Samuel W. Little *et al. vs.* Ezekiel Giles *et al.* Amended bill. Filed Nov. 27th, 1882. Elmer D. Frank, clerk. T. M. Marquett, Harwood and Ames, solicitor- for comp'ts.

Thereupon afterwards, to wit, on the 27th day of November, 1882, [the] answer of Giles to amended bill was filed in said case, which said answer is in words and figures following, to wit:

582 In the Circuit Court of the United States, District of Nebraska.

The answer of Ezekiel Giles, one of the defendants, to the amended and supplemental bill of complaint of S. W. Little, Samuel Arbuckle, D. B. Alexander, A. J. Sawyer, S. G. Owen, Lorenzo Assmesson, R. H. Oakley, Sarah J. Purcell, A. P. S. Stuart, Thomas R. Clark, Mary A. McElhinney, D. C. Kinsell, Hannah Selwood, Alexander C. Huestis, W. J. Van Dorn, G. W. Lashers, Charles D. C. Huestis, Allen W. Hawley, A. F. Lewis, Samuel Arthur, G. F. Thornton, Sarah Cummings, William H. Rundell, Jacob Freedman, O. P. Austin, J. A. Buckstaff, Mary McNair, George D. Camp, Wilbur F. Kellogg, Elizabeth N. Chase, Sarah A. Gable, Samuel Aughey, Clarinda A. Bumstead, Elizabeth Paden, Martha E. Snowden, Thomas Woods, Joseph S. Hoagland, Elizabeth W. Pillsbury, Henry V Snowden, W. S. Garrison, C. L. Hooper, S. E. Story, V. E. Farmer, Josephine St. Louis, Frank J. Wassika, Ellen N. Miller, John H. Schwabold, Helen Weber, Samuel Henderson, Christine Bohlman, Joseph Richardson, Patrick Lyons, W. Sanford Gee, Allen Cogswell, M. B. Cheeney, Mary E. Maloney, Emma A. Beach, Barrett F. Loath, Francis D. Howell, L. S. Howell, Samuel D. Bacon, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Jacob Freedman, Samuel P. English, Guy A. Brown, H. O. Snow, George Warder, D. D. Muir, George W. Severance, Rody A. Prindell, Mina W. Brown, W. J. Van Dorn, and G. W. Lashers, plaintiffs.

This defendant, now and at all times hereafter saving and — to himself all right and benefit of exception which may be had or taken to the said amended and supplemental bill, for answer thereto says:

I. This defendant says that the deeds conveying the premises here in question made to the said Burr and Wheeler, bearing

date on the 15th of September, 1879, were executed, one by
583 William R. Dawson, Sarah H. Dawson, his wife, Milita C. Dawson, since married to Mr. Tillman, and Minnie S. Dawson, who was then and still is a minor, the other by Albert Dawson and Mahala J. Dawson, his wife, A. A. Knicely and Elvaline Knicely, his wife, the said Eveline before her marriage being Eveline Dawson and a daughter of the said Jacob Dawson, deceased; and the said two deeds were duly executed and delivered to the said Burr and Wheeler at the several days at which they on their face appear to have been acknowledged by the grantors respectively therein. John Hampton Dawson died in 1871. The consideration for the said two several deeds was the sum of $200 in cash paid by said Burr and Wheeler to the said grantors, and the agreement, a part whereof is set out in the said amended and supplemental bill on the third page thereof, and bears date the 10th of November, 1879, and was made between William R. Dawson, Albert Dawson, Minnie Dawson, Melita Dawson, and Eveline Dawson Knicely, on the one side, and the said Burr and Wheeler on the other side, a copy of which is hereto attached marked "A" and made a part hereof.

II. This defendant denies that when she made the one of said deeds executed by her Eveline Dawson Knicely was a minor, and says that she was more than eighteen years old; and this defendant denies that either she, the said Eveline, or the said Minnie S., or the said Melita C. have or could disaffirm their said deed to the said Burr and Wheeler, because he says that on or about the 13th of January, 1882, the said Melita C. had attained her majority, she on said day being sixteen years and more old, and having intermarried with the said Tillman, and the said Minnie being at the day of the filing of this answer still a minor. On said 13th of January, 1882, the said Melita C. made her certain deed of conveyance, bearing date on the 2nd day of January, 1882, whereby she duly conveyed all of the lands and premises here in question to this de-
584 fendant, a copy of which is hereto annexed, marked "B," and made a part hereof. Wherefore this defendant denies that by all or any or either of the alleged acts of disaffirmance on the part of any of the parties to the deeds, or either of them, first hereinabove mentioned were or are void or of no effect as to any part of the lands and premises therein conveyed, or that the said Burr and Wheeler, or this defendant, have or can have no interest or claim therein, or that all or any claim, right, or color of title is now in the said minors, or that the said Melita C. and Minnie S. are, or either of them is, a proper or necessary party to this suit, or that the issues therein are not wholly between this defendant and said plaintiffs.

III. Since the said deeds hereinbefore mentioned were made, and prior to the 22nd of February, 1882—that is to say, on the 25th of December, 1880—the said William L. Dawson died, leaving Carlton Dawson, his son, him surviving. And the said Eveline died about the 1st of February, 1881, after this cause of action was removed out of the district court of the State of Nebraska for the county of

Lancaster into this court. A pleading was filed in the former court, purporting to be an answer and cross-bill on behalf of Albert L. Dawson, Carleton Dawson, Melita C., and Minnie S., but the same was so filed without any authority in law. As to the contents and allegations therein this defendant does not know and cannot state whether the same are truly set out in said amended and supplemental bill, and prays leave to refer thereto should it be necessary to do so. But the defendant denies that the deeds first hereinbefore mentioned, or either of them, was obtained by misrepresentations or fraud, or made for the sole or express intent to enable the said Burr and Wheeler to prosecute actions in their names for the recovery of the property therein described, or any thereof, for the
585 benefit of the said grantors, or that the deed of said Burr and Wheeler to this defendant was made in fraud of the rights of the said grantors, or without consideration, or that this defendant had any knowledge of any rights in said premises, or any thereof, in favor of any of the heirs of the said Jacob Dawson, at or before the said conveyance to him.

IV. This defendant does not know and has not been informed, save by the said amended and supplemental bill, and cannot set forth as to his belief or otherwise, whether the said John Hampton Dawson, acting as the attorney-in-fact of the said Editha J. Dawson, conveyed all or any or either of the lands in that behalf in the said bill mentioned, or made to the purchasers of the premises so conveyed the representations in that behalf in the said bill alleged. But this defendant says that forasmuch as all and every the said deeds were made, and the said John H. died before the said Editha J. intermarried with the said Pickering, no estate under or by virtue of the said will and the terms thereof ever vested in the said John H., or by or through or on account of him, either mediately or immediately, ever came to this defendant.

Wherefore this defendant submits that he is not in anywise estopped to claim the said estates here in question, and all thereof, by reason of anything said or done or committed by the said John H. Dawson. And this defendant says that he does not know and has not been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether the said John H. converted to his use any of the proceeds of the sale of the said lands sold or conveyed by him, as the attorney-in-fact of the said Editha J., as an advance or in satisfaction of any part of his interest or expectancy in the said lands, or any thereof, as heirs of the said Jacob and Editha J. Dawson.

586 V. This defendant denies that the said L. B. Burr ever represented or stated to any purchaser from the said Edith J. of any of the premises here in question, or to the public, that she, the said Edith J., had a good or perfect title to the same, or that upon said alleged statements or representations the said purchasers, or any of them, relied or made their said alleged purchases or paid the purchase price of the premises so purchased by them, respectively, or any part thereof, or entered into possession thereof, or made vast, valuable, or any improvements, or that this defendant paid or promised no consideration to said Burr and Wheeler for the deed in said

bill mentioned from them to him, or that the said deed passed to this defendant no interest or estate in or to the said land or any part thereof, or that the same appears by the power of attorney made by this defendant to said Burr set out in said bill, or that the surviving heirs of the said Jacob or the said Carleton Dawson or Burr and Wheeler are the sole or only parties in interest in this suit adverse to the said plaintiff.

And this defendant alleges that the said Burr had no knowledge of the said will or the terms or effect thereof until the 12th day of September, 1878, nor did he ever state to any one of said plaintiffs what the terms or effect of said will were, nor in any way discuss the same with them, or either of them, while, on the other hand, they and each of them, before their respective purchases, had seen, read, and knew the contents, terms, and effect of the said bill.

VI. And this defendant says that on the 27th of January, 1882, this defendant commenced in this court his certain action against Samuel J. Owen and R. H. Oakley for the recovery of the possession of that certain piece or parcel of land described as fol-
587 lows: Nineteen feet five and one-half inches off of lots five and six, in block fifty-four, in the city of Lincoln, more fully described as follows: Eighteen feet nine and one-half inches off of the east side of lot six, in said block, commencing at the center of the west wall of the building occupied by Mrs. Alexander and running due west nineteen feet five and one-half inches to or near the center of the wall of the building occupied by S. W. Little next west; that the said defendants answered the petition filed by this defendant in said action by a plea in abatement, alleging that the conveyances made by the said Dawsons to said Burr and Wheeler, and by said Burr and Wheeler to this defendant, were without consideration and passed and were intended to pass no title to him; were made and contrived for the purpose of making a case cognizable by this court; which plea was heard upon proof adduced by the parties, and by this court was overruled, as by the said plea and the judgment thereon remaining of record in this court will on reference thereto more fully appear; that pending the said plea the said plaintiffs and this defendant made their certain stipulation in writing, a copy of which is hereto annexed, marked "C," and made a part hereof; that the said Owen and Oakley are parties plaintiff in this cause, and the premises in question in said action are a part of the premises here in dispute. Wherefore this defendant submits that as to all and every the matters and things pleaded and alleged in the said plea in abatement the said plaintiffs are concluded and cannot be heard to allege or agitate the same in this suit.

VII. And this defendant denies that all or any of the money received by the said Edith J. for the sale and conveyance of all or any of the real estate in controversy in block fifty-four, in Lincoln, was used by her, or her agent or attorney, under her direction, or otherwise, for the payment of the debts of the said Jacob,
588 amounting to $5,000, or any other sums, or of building a suitable dwelling for the habitation of the said Edith J. or her children, or that this defendant or all or any of the persons

or parties through whom he claims is estopped to set up or pretend to have any interest, right, or title in or to the same and every part thereof.

VIII. This defendant denies each and every allegation in the said bill contained whereby the said Edith J. Burr Wheeler and the heirs of the said Jacob are charged with contriving the marriage of the said Edith J. with said Pickering, or that they or any of them contrived or procured their separation.

IX. This defendant denies that the said Burr and Wheeler ever made to Carlos C. Burr any deed or conveyance of any of the premises here in question or that the said Carlos C. Burr is a proper party hereto.

X. And this defendant denies all combination and confederacy wherewith he is in and by the said bill charged, without that any other matter or thing material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, and avoided, traversed or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

L. C. BURR,
Att'y for Giles.

J. M. WOOLWORTH,
Of Counsel.

DISTRICT OF NEBRASKA, *ss:*

L. C. Burr, being duly sworn, says I am the solicitor for the defendant in the above answer; that he is a non-resident of and absent from this State, and it is impracticable to obtain his oath of verification to the above answer before it will be necessary to file the same.

589 I have read the said answer and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on information and belief, and as to those matters *he* believes it to be true.

L. C. BURR.

Subscribed in my presence and sworn to before me this 27th day of November, A. D. 1882.

ELMER D. FRANK, *Clerk.*

EXHIBIT A.

This instrument, made and entered into this tenth day of November, 1879, between Lionel C. Burr and Hiland H. Wheeler, both of Lancaster county, Nebraska, party of the first part, and William R. Dawson, Albert Dawson, Minnie Dawson, Melita Dawson, and Eveline Dawson Knicely, *Dawson*, heirs-at-law of Jacob Dawson, deceased, parties of the second part:

Witnesseth that the *first* parties of the first part do hereby agree

with the said parties of the second part that whenever the said parties of the second part shall come into the possession and be seized in fee-simple absolute of the estate, or any part thereof, conveyed by said parties of the second part to said parties of the first part, then said parties of the first part shall quit-claim to said parties of the second part the one-third undivided interest which they, as tenants in fee-simple, have in said premises, or, at the election of said parties of the first part, pay to the said parties of the second part the value of said undivided one-third interest of said estate in cash.

In witness whereof the said parties have hereunto set their hands and seals the day and year above first written. And if any moneys come into the hands of us by way of settlement of suits herein, one-third thereof we will pay to parties of second part after deducting expenses.

L. C. BURR.
HILAND H. WHEELER.

590 Witness to signatures—
J. P. KEMP.

Endorsed.

For value received, to wit, the sum of five dollars in hand paid by the heirs of Jacob Dawson, *with* receipt whereof is hereby acknowledged, we do hereby jointly and severally guarantee the performance and fulfillment by said L. C. Burr and H. H. Wheeler of the within agreement with said heirs and all the conditions thereof mentioned therein.

Dated Lincoln, Neb., Jan. 14th, 1882.

C. C. BURR.
J. R. WEBSTER.
A. D. BURR.
FRANK I. SHELDON.
WM. M. CLARK.

EXHIBIT B.

This indenture, made this second day of January, A, D. 1882, between Melita C. Dawson Tillman, wife of Joseph Tillman, late Melita C. Dawson, daughter of Jacob Dawson, deceased, of Cass county, Nebraska, party of the first part, and Ezekiel Giles, of Clay county, Iowa, party of the second part, witnesseth: That the party of the first part, in consideration of one dollar to her in hand paid, the receipt whereof is hereby acknowledged, has sold, and by these presents doth grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns, forever all those certain tracts, pieces, and parcels of land more particularly known and described as follows, to wit: All those certain tracts, pieces, or parcels of land situated in the county of Lancaster and State of Nebraska, more particularly known and described as follows, to wit: The west half of the southeast quarter of section nineteen, township ten north, range seven east, of the sixth principal meridian, contain-

ing eighty acres; the southeast quarter of the southeast
591 quarter of section thirty-five, township ten north, range six east, of the sixth principal meridian, containing 40 acres; the northwest quarter of the southwest quarter of section six, township ten north, range seven east, of the sixth principal meridian, containing 40 acres; the east half of the northeast quarter of section thirty-five, township ten north, range six east, of the sixth principal meridian, containing 80 acres; the west half of the northwest quarer of section twenty-four, township ten north, of range six east, of the sixth principal meridian, containing 80 acres; also the west half of the northeast quarter of section nine, township nine north, of range thirteen east, of the sixth principal meridian, lying and being in Otoe county, Nebraska, containing 80 acres; also the north fifty feet of lot number nineteen, of block number fifty-four, of the city of Lincoln, Lancaster county, Nebraska, according to the original survey and plat of the town, now city, of Lincoln aforesaid, being all that tract of land bounded and described as follows: Beginning at the northwest corner of said lot nineteen, running thence east fifty feet; thence south to the east line of said lot fifty feet; thence west fifty feet; thence north fifty feet to the place of beginning; also the west half of lot three, and all of lots four, five, and six, in said block fifty-four, in said city of Lincoln; also all of lot six (6), in block forty-one, in said city of Lincoln, according to the original survey and plat of the town, now city, of Lincoln aforesaid, together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining, and also all the estate, right, title, interest, claim, and demand, as well in law as in equity, which the said party of the first part now has, or ever has had, in and to the and each of the above-described
592 parcels of land, with the appurtenances, and especially such as accrued to her as the heir or devisee of Jacob Dawson aforesaid.

This instrument is made and executed by the said party of the first part with the intention and for the purpose to, and she hereby does by these presents, ratify and confirm in all things and respects a certain conveyance made by and between herself as Melita C. Dawson and others (who were children and heirs-at-law of Jacob Dawson aforesaid), parties of the first part, and Lionel C. Burr and Hiland H. Wheeler, parties of the second part, dated the 15th day of September, A. D. 1879, and acknowledged the 3rd day of December, 1879, at the time and execution of which said conveyance she was a minor, unmarried, and under the age of eighteen years. This instrument is also made and executed by said party of the first part with the intention and for the purpose, and by these presents she hereby declares she does, and does disaffirm, annul, set aside, avoid, and cancel in all respects, as far as in her power lies or as she legally can do, or so far as she is concerned or interested in, a certain conveyance executed by herself as Melita C. Dawson and others (who were children and heirs-at-law of Jacob Dawson aforesaid), parties of the first part, and Herman G. Shaberg, party of the second part,

dated and executed September 12, 1878, at which said time and date of execution she, the said Melita C. Dawson, was a minor, unmarried, and under the age of eighteen years, and recorded in the county clerk's office of Lancaster county, Nebraska, in Book 7 of Deeds, at page 336 of the deed records of said Lancaster county, which said deed was executed by her while a minor as aforesaid and purported to convey lots five and six, in block forty-one, in said city of Lincoln. This instrument is made for the further purpose of confirming the title to all the above-described tracts, pieces, and par-
593 cels of land in the aforesaid Ezekiel Giles, grantee and assignee of the said Burr and the said Wheeler as aforesaid.

In witness whereof the party of the first part has hereunto set her hand and the seal the day and year first above written.

MELITA C. TILMAN.
MELITA C. DAWSON TILMAN. [SEAL.]

Signed, sealed, & delivered in presence of—
JOHN MURFIN.

The words so far in line 10 of this page interlined before execution.

THE STATE OF NEBRASKA, } ss:
County of Cass, }

On this 13th day of January, A. D. 1882, before me, John Murfin, a notary public duly commissioned and qualified for and residing in said county, personally came Melita C. Dawson Tilman, to me known to be the identical person described in and whose name is affixed to the foregoing instrument as grantor, and acknowledged that she executed the same, and the instrument to be her voluntary act and deed and for the purpose therein set forth.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] JOHN MURFIN;
Notary Public.

Endorsed: Deed. Melita C. D. Tillman to Ezekiel Giles. The State of Nebraska, Lancaster county, ss. Filed for record in the clerk's office of said county the 14th day of Jan'y, 1882, at 4 o'clock and — minutes p. m. Book No. 11, pages 279 to 281. J. H. McClay, clerk.

EXHIBIT C.

In the United States Circuit Court, District of Nebraska.

594 Five cases of—

EZEKIEL GILES
vs.
S. W. LITTLE *et als.*, S. G. OWEN *et al.*, MARTHA ALEXANDER *et al.*, A. P. S. STEWART *et al.*,

And a suit in equity of—

S. W. LITTLE *et al. vs.* EZEKIEL GILES *et al.*

EZEKIEL GILES *vs.* S. W. LITTLE *et al.*

Cross-bill.

It is hereby stipulated and agreed between the parties to the above-entitled causes that the injunction in the equity suit shall be so far dissolved and modified that this stipulation shall be in all respects good and valid; that the plea in abatement in the action of Giles *vs.* Owen *et al.* shall be tried Tuesday, the 16th day of this May term of this court, and that the decision thereon shall be taken and entered of record as the decision upon the plea filed in the four other actions at law, and also of the issues in the said suit in equity so far as they are the same or are joined on the said pleas.

J. M. WOOLWORTH,
Att'y for Giles.
T. M. MARQUETTE,
For Defendants and for Plaintiff in Equity Suit.

Omaha, May 3, 1882.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 202, F. United States circuit court, district of Nebraska. S. W. Little *et al. vs.* Ezekiel Giles *et al.* Answer of defendant Giles to the amended and supplemental bill of complaint. Filed Nov. 27, 1882. Elmer D. Frank, clerk.

Thereupon afterwards, to wit, on the 29th day of November, 1882, a replication was filed in said case, which said replication is in words and figures following, to wit:

595 In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

SAMUEL W. LITTLE *et al. vs.* EZEKIEL GILES *et al.*

The replication of Samuel W. Little, Samuel Owen, and all others similarly situated, plaintiffs, to the answer of Ezekiel Giles and others, defendants.

The repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies

of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by the repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things the repliants, —, and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by the said bill of complaint they have already prayed.

T. M. MARQUETT,
HARWOOD & AMES,
Solicitors for Plaintiffs.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 202, F. U. S. circuit court, district of Nebraska. In equity. Samuel W. Little *et al. vs.* Ezekiel Giles *et al.* Replication. Filed Nov. 29, 1882. Elmer D. Frank, clerk. T. M. Marquett, Harwood & Ames, solicitors for plaintiff.

596 Thereupon, afterwards, to wit, on the 15th day of December, 1882, depositions were taken on behalf of both complainant and defendants in said case; which said depositions are in words and figures following, to wit:

Stipulation.

In the Circuit Court of the United States for the District of Nebraska.

S. W. LITTLE *et al. vs.* EZEKIEL GILES.

It is hereby stipulated and agreed by and between said S. W. Little *et al.* and said Ezekiel Giles that the proposed amendment to petition or bill may be filed in said action on this, Monday, the 27th of November, 1882, and that the said Giles will file his answer thereto instanter, and that said Little [*et al.*] shall file their replication thereto immediately, and that argument on the motion filed in this case for a receiver be postponed until final argument of this case at this present term of court, and by Saturday, the 2nd day of December, 1882, said Little *et al.* shall finish and complete taking proof on said amended bill on their side before Examiner J. S. Dales, Esq., and said Giles shall close his proof on or before Wednesday, the 6th day of December, 1882, and that said cause shall stand for trial on the regular term of the equity docket this present term of court as soon as the court can reach the same.

November 27th, 1882.

EZEKIEL GILES,
By L. C. BURR, *His Att'y.*
HARWOOD & AMES,
T. M. MARQUETT,
Att'ys for Plaintiffs.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

597 I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the annexed copy of stipulation in case of Little *et al. vs.* Giles with the original on file in this office and that the same is a correct transcript thereof and of the whole of said original.

In testimony whereof I have caused the seal of said court to be hereto affixed, at the city of Omaha, in said district, this 28th day of November, 1882.

[SEAL.] ELMER D. FRANK, *Clerk.*

Endorsed: S. W. Little *et al. vs.* Ezekiel Giles. Stipulation. Filed Nov. 27, 1882. Elmer D. Frank, clerk. L. C. Burr, for Giles.

In the Circuit Court of the United States, District of Nebraska. In Equity.

S. W. LITTLE *et al. vs.* EZEKIEL GILES.

EZEKIEL GILES
vs.
S. W. LITTLE *et al.* } Cross-petition.

It is hereby stipulated and agreed by the parties hereto that the time wherein the above-named Giles may take testimony before J. Stuart Dales, Esq., be extended to and including Saturday, December 9, 1882.

Dated Lincoln, Nebraska, December 8, 1882.

HARWOOD & AMES,
For Complainant.

Endorsed: Circuit court United States, district of Nebraska. S. W. Little *et al. vs.* Ezekiel Giles. Stipulation extending time wherein to take testimony. Filed Dec. 8th, 1882. J. Stuart Dales, examiner.

DISTRICT OF NEBRASKA, *ss:*

598 The President of the United States of America to Carlus C. Burr, and to L. C. Burr and H. H. Wheeler, Greeting:

We command you that, laying aside all manner of business and excuses whatsoever, you personally be and appear before J. S. Dales, Esq., examiner for the circuit court of the United States for the district of Nebraska, at the office of the clerk of the district court in Lincoln, Nebraska, on the 2nd day of December, 1882, to give evidence, at 9 o'clock a. m. of that day, on behalf of the plaintiffs in a suit pending in said court, and bring with you the deed above described ready to be shown in evidence, and that you and each of you bring with you a certain quit-claim deed from L. C. Burr and wife and H. H. Wheeler to C. C. Burr, dated about April 1st, 1880, covering lot 8, in block one, and lots 7, 8, 9, & 10, in block six, in Capital addition to Lincoln, and other property, wherein S. W. Little *et al.* [are] plaintiffs and Ezekiel Giles *et al.* defendants.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 1st day of December, 1882, and in the — year of the Independence of the United States of America.

Attest:

[SEAL.] ELMER D. FRANK, *Clerk.*

Endorsed.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I hereby certify that on the 2nd day of Dec., 1882, I served the within subpœna by reading the same to the within-named Carlos C. Burr, L. C. Burr, & H. H. Wheeler, L. C. Burr & Wheeler demanding fees which were not paid.

Dated this 2nd day of December, 1882.

GRAN. ENSIGN, *Sheriff.*
By S. M. MELICK, *Deputy.*

Fees:

Service	75
Mileage	10
Copies	75
Total	$1 60

599 Depositions of sundry witnesses, taken by and before me, J. Stuart Dales, an examiner of the circuit court of the United States in and for the district of Nebraska, at the office of the clerk of the district court, 2nd judicial district of Nebraska, in Lincoln, in said district of Nebraska, beginning on Saturday, Dec. 2, 1882, and completed on Monday, the 11th day of December, 1882, pursuant to the stipulation hereto attached, said depositions being taken on behalf of complainants and respondents, and to be read in evidence on their behalf, respectively, upon the trial of a cause in our said circuit court, wherein Little *et al.* are complainants, and Giles *et al.* are respondents.

Appearances: Marquett, Deweese & Hall, & Harwood & Ames, solicitors for complainants; L. C. Burr, solicitor for respondent Giles.

C. C. BURR, being produced as a witness for the complainant herein, and of lawful age, being first duly sworn, on his oath says, in answer to interrogatories propounded as follows:

Int. 1. State your name, age, place of residence, and occupation.

Ans. My name is Carlos C. Burr; age, about 36 years; place of residence, Lincoln, Nebraska; occupation, attorney-at-law.

Int. 2. How long have you lived in Lincoln?

Ans. About fifteen years.

Int. 3. What relation, if any, are you to L. C. Burr?

Ans. His brother.

Int. 4. State whether or not, on or about April 1st, 1880, L. C. Burr

& wife and H. H. Wheeler executed & delivered to you a deed
600 to lots 7, 8, & 9 in block 6 of Capital addition to Lincoln, Nebraska, together with other lots in said Capital addition, and also conveying blocks 22, 49, 44, 48, except lot 10, in 48, in Dawson's addition to South Lincoln, Nebr.

Objected to by counsel for Giles as immaterial, irrelevant, & incompetent; that there are only two persons pretended to be complainants who have any of the lots just described, and they only having one lot each, and that none of the other estates named is in controversy in this action, and that the two persons spoken of are not complainants in this suit, & that counsel for complainants have had no authority to bring any action for them, and this action is now proceeding against their will and consent.

Ans. I think about that date the parties named executed and delivered to me a paper which was not intended by either of them or me as a deed, though it was in form a quit-claim deed, & was given to me for two purposes—1st, as assurance & security that these parties would see that I suffered no loss or damage by reason of having and owning these lots; and, 2nd, that I might have something to show to different persons to whom I had conveyed some of these lots that they would not be continually troubling me about the title to this property, the whole purpose of the paper being for the security spoken of, and the other purpose —, it being distinctly understood that same should not be recorded & only delivered in escrow for the above purposes.

Int. 5. Have you that deed?

601 Ans. No; I have not that paper. I cannot call it a deed.

Int. 6. You knew what I meant when I asked you for that deed, did you not, and spoke of it at that time as a deed, did you not?

Counsel for Giles objects as immaterial to show what conversation counsel for complainant had with the witness.

Counsel for complainant withdraws the last question.

Int. 7. What did you do with that deed?

Counsel L. C. Burr, for Giles, here hands witness a paper.

Ans. I handed the paper I have heretofore testified about to my brother, L. C. Burr, and he now hands it back to me, and I have, it in my hand.

Counsel for complainants now offer in evidence the instrument produced by the witness, which is hereto attached by the examiner and made a part hereof & marked Exhibit "A."

Counsel for Giles objects to the introduction of the paper in evidence for the reasons stated in objection to Int. No. 4 asked of this witness.

Int. 8. When did you give this deed back to L. C. Burr?

Ans. It was a week or two ago, the same day or day after I had a conversation with Mr. Hall about the paper—on Saturday, Nov. 11,

1882, just before October term of U. S. circuit court, dist. of Nebraska, 1882.

Int. 9. You may state whether or not you had sold some of the lots in this deed described and given a warranty deed to the same.

Counsel for Giles objects as immaterial & irrelevant, because only two lots out of the number mentioned are pretended to be in
602 controversy in this action, some of the lands mentioned in the deed being in Capital addition and not pretended to be in controversy here, and not the best evidence.

Ans. I don't think I had at the date of the deed; it may be possible I had, but I do not think so now.

Int. 10. When did you execute a deed to a half interest in this property to D. D. Muir?

Ans. My impression is it was several months after the date of the paper offered in evidence, & I don't know whether it was a quit-claim or warranty deed.

Int. 11. You may state how you happened to return this deed to L. C. Burr.

Ans. He came in and said he wanted to take it, & I let him have it, and he gave it back to me just a few moments since.

Cross-examination:

Int. 1. What consideration did you pay Burr & Wheeler or either of them, for this paper?

Ans. Nothing whatever; I did all the work myself; it is all in my handwriting.

Redirect examination:

Int. 1. What agreement was there, if any, as to the consideration you were to pay?

Ans. Nothing whatever.

C. C. BURR.

Subscribed in my presence and sworn to before me this 2nd day of December, 1882.

J. STUART DALES,
Examiner U. S. C. C., District of Nebr.

"EXHIBIT A." (Burr.)

Know all men by these presents that we, Lionel C. Burr and Aldana Burr, his wife, and Highland H. Wheeler, an unmarried man, of the county of Lancaster, and State of Nebraska, for the considera-
603 tion of one dollar, hereby quit-claim to Carlos C. Burr, of the county of Lancaster and State of Nebraska, the following-described real estate, situate in the county of Lancaster and State of Nebraska, to wit: Lot eight (8), in block one (1); lots seven (7), eight (8), nine (9), & ten (10), in block six (6); and lots seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block five (5); all in Capital addition to Lincoln, in county and State aforesaid; also lots one (1), two (2), three (3), and four (4), in block twenty-two (22);

and all of block forty-nine (49), and all of block forty-eight (48), except lot ten (10) of said block, and all of block forty-four (44), all in Dawson's addition to South Lincoln, according to the recorded plat thereof. And the said Aldana Burr, wife of said Lionel C. Burr, hereby releases all her dower interest in and to above-described premises.

In witness whereof we have set our hands this first day of April, 1880.

HILAND H. WHEELER.
LIONEL C. BURR.
ALDANA BURR.

In presence of—
FRANK L. SHELDON.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

Be it remembered that on the first day of April, 1880, before the undersigned, Wm. R. Kelly, a notary public in and for said county, personally came Lionel C. Burr and Aldana Burr, his wife, and Hiland H. Wheeler, an unmarried man, to me known to be the identical persons described in and who executed the foregoing deed as grantors, and acknowledged said instrument to be their and each of their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

[SEAL.]

WM. R. KELLY,
Notary Public.

604 Endorsed: "A." Quit-claim deed from Lionel C. Burr *et ux.* and Hiland H. Wheeler to Carlos C. Burr. Filed Dec. 2, 1882. J. Stuart Dales, examiner U. S. C. C., dist. of Nebr.

O. C. BELL, being produced as a witness herein for complainant, of lawful age, and being first duly sworn, on oath says:

Int. 1. State your name, age, place of residence, and occupation.

Ans. My name is O. C. Bell; age, 37 years; place of residence, Lincoln, Nebraska; occupation, deputy county clerk of Lancaster county, Nebraska.

Counsel for complainants now offers in evidence the following records of Lancaster county, in the clerk's office of said county, as follows, and requests examiner to make and attach certified copies of same:

Carlos C. Burr & wife to D. D. Muir, Deed Record No. 1, p'g 626; deed from Burr & Muir to Allen W. Cogswell, Deed Record No. 6, p'g 105; Deed Record No. 6, pp. 140 & 149; Deed Record No. 6, p'g 30; Deed Record "Y," p'g 207; which are hereto attached and certified by the examiner and made a part hereof and marked Exhibits Nos. 1, 2, 3, 4, 5, & 6.

Counsel for Giles objects to the introduction of same in evidence as immaterial, irrelevant, and incompetent and not the best evidence.

O. C. BELL.

Subscribed in my presence and sworn to before me this 2nd day of December, 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Nebr.

Counsel for complainant now offers in evidence a certified
605 copy of a judgment & satisfaction of same in the district court in and for Lancaster county, Nebraska, wherein Allen W. Hawley is plaintiff and Homer J. Walsh and Israel Putman are defendants, which is hereto attached by the examiner and made a part hereof as Exhibit "B."

Counsel for Giles objects, because under the stipulation filed only evidence was to be taken to the amendment to the bill; further, as incompetent, immaterial, & irrelevant.

"EXHIBIT B."

Be it remembered that at the February, A. D. 1880, term of the district court of the 2nd judicial district of Nebraska, held in and for Lancaster county, to wit, on the 23rd day of February, 1880, that being the 1st day of said February, A. D. 1880, term of said court—present, Hon. S. B. Pound, judge presiding; Gran. Ensign, sheriff; and A. D. Burr, clerk—the following, among other, proceedings were had and done, to wit:

ALLEN W. HAWLEY
vs.
HOMER J. WALSH and ISRAEL PUTMAN. } 2185. H. 40.

And now, this cause coming on for hearing upon the pleadings and evidence, and having been heretofore submitted to the court on briefs furnished by plaintiff and defendants, to wit, on the 30th day of October, 1879, on consideration whereof the court finds on the issue joined for the plaintiff, and finds the defendants in unlawful possession of the premises. The court further finds that the defendants have a lien on the said premises for the sum of one hundred thirty-three and $\frac{78}{100}$ dollars (for taxes), to which plaintiff excepts. It is therefore considered and decreed by the court that the said Allen W. Hawley recover from the said Walsh & Putman the real property described in the petition, to wit: The northwest quarter of the southeast quarter of section No. nineteen (19), town-
606 ship No. ten (10), north of range No. seven (7) east, in Lancaster county, Nebraska, together with his costs herein expended, taxed at $——.

It is further ordered that plaintiff pay the defendants the said sum of $133.78 in sixty (60) days, and in default that the said premises, or so much thereof as may be necessary to satisfy said sum of $133.78, be sold according to law to satisfy said lien and cost of sale; to which plaintiff excepts.

That afterwerds, to wit, on the 24th day of July, 1880, the above judgment was satisfied, as appears upon the judgment records of said court in the words and figures following, to wit:

"July 24, 1880.—Rec'd of A. W. Hawley $96.74, judgment, less costs & 7 per cent. after 60 days.

"A. D. BURR, *Cl'k D. C.*"

"M'ch 19, 1881.—Rec'd of A. D. Burr, cl'k D. C., $96.75 in full of above.

"H. J. WALSH,
"*Surv. Partner W. & P.*"

STATE OF NEBRASKA, }
Lancaster County, } *ss:*

I, A. D. Burr, clerk of the District court of the 2nd judicial district of Nebraska, held in and for Lancaster county, hereby certify that the above and foregoing is a true and correct copy of the judgment and satisfaction of same of record in the clerk's office of said court in a case wherein Allen W. Hawley is plaintiff and Homer J. Walsh & Israel Putman are defendants.

Witness my hand and the seal of said court this 1st day of November, 1882.

A. D. BURR, *Cl'k D. C.*,
[SEAL.] By J. S. DALES, *Deputy.*

Clerk's fees, $1.00.

Endorsed: "B." Allen W. Hawley *vs.* Homer J. Walsh [and] Israel Putman. Copy of judgment and satisfaction.

EXHIBIT No. 1. (Witness Bell.)

607 This indenture, made this ninth day of June, in the year of our Lord one thousand eight hundred and seventy-nine, between Carlos C. Burr and Mary E. Burr, his wife, of the county of Lancaster and State of Nebraska, of the first part, and D. D. Muir, of the same place, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of fifteen hundred dollars to them duly paid, the receipt whereof is hereby acknowledged, have sold, and by these presents do grant, convey, and confirm, unto said party of the second part, his heirs and assigns, all that certain piece, parcel, or tract of land situated in the county of Lancaster and State of Nebraska, more particularly known and described as follows, to wit: An undivided one-half interest in and to lot eight (8), in block one (1), and lots seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block five, and lots nine (9) and ten (10), in block six (6), all in Capital addition to town (now city) of Lincoln; all of block forty-four (44), being twelve lots; all of block forty-eight (48), except lot ten (10) in said block, being eleven lots; and lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), and eight (8), in block forty-nine (49), being all of said block, all in Dawson's

addition to South Lincoln, Lancaster county, Nebraska, according to the recorded plats thereof; together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, right, title, interest, and claim whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, with the appurtenances.

And the said Mary E. Burr, wife of the said Carlos C. Burr, does hereby grant, remise, release, and forever convey unto the said party of the second part all her right, title, and estate of dower in and to the foregoing-described premises.

And the said Carlos C. Burr, for himself and his heirs, ex-
608 ecutors, and administrators, does hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the said Carlos C. Burr, at the time of the ensealing and delivery of these presents, *he* is lawfully seized in his own right of a good, absolute, and indefeasible estate of inheritance in fee-simple of and in all and singular the above-granted premises, with the appurtenances, and has good right, full power, and lawful authority to grant and convey the same in the manner aforesaid, and that the same are now free and clear of and from all former and other grants, charges, assessments, taxes, and incumbrances of whatsoever nature, except taxes which may have become a lien since January 1, 1879.

And the said Carlos C. Burr, for himself and his heirs, and the above-granted premises, with the appurtenances, against all persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CARLOS C. BURR. [SEAL.]
MARY E. BURR. [SEAL.]

Signed, sealed, and delivered in presence of—
CHARLES C. STEIN.

THE STATE OF NEBRASKA, } ss:
Lancaster County }

On this 9th day of June, A. D. 1879, before me, the subscriber, a notary public duly appointed, commissioned, and qualified for and residing in said county, personally appeared Carlos C. Burr and Mary E. Burr, his wife, to me known to be the identical persons described in and who executed the foregoing conveyance as grantors, and they severally acknowledged the said instrument to be their and each of their voluntary act and deed.

In testimony whereof I have hereunto set my hand and no-
609 tarial seal, at Lincoln, in said county, the day and year last above written.

[SEAL.] CHARLES C. STEIN,
Notary Public.

UNITED STATES OF AMERICA, }
The State of Nebraska, Lancaster County, } *ss:*

I, J. Stuart Dales, examiner U. S. C. C., dist. of Neb., hereby certify that the above and foregoing is a true and correct copy of a deed as appears of record in the office of the clerk of said county, in Deed Record No. 1, at page 626.

In testimony whereof I have hereunto set my hand, at the city of Lincoln, this 4 day of Dec., A. D. 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Nebr.

Endorsed: Warranty deed. Full covenant. Carlos C. Burr *et ux.* to D. D. Muir. State of Nebraska, Lancaster county, ss: Entered on numerical index and filed for record in the clerk's office of said county the 29th day of July, 1879, at 2 o'clock & 40 minutes p. m., and recorded in Book No. 1 of deeds, on page 626. R. D. Silver, co. cl'k. J. W. Ferguson, deputy.

EXHIBIT No. 2. (Witness Bell.)

This indenture, made this twelfth day of November, in the year of our Lord one thousand eight hundred and eighty, between Carlos C. Burr and Mary E. Burr, his wife, and D. D. Muir and Armista W. Muir, his wife, of the county of Lancaster and State of Nebraska, of the first part, and Allen W. Cogswell, of Kalamazoo county, Michigan, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of two hundred dollars to them duly paid, the receipt whereof is hereby acknowledged, has sold, and by these presents does grant, convey, and confirm,
610 unto the said party of the second part, his heirs and assigns, all that certain piece, parcel, or tract of land situated in Dawson's addition to South Lincoln, in the county of Lancaster and State of Nebraska, more particularly known and described as follows, to wit: Lots numbered seven (7) and eight (8), in block numbered forty-four, in Dawson's addition to South Lincoln—

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, right, title, interest, and claim whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, with the appurtenances.

And the said Mary E. Burr & Armista W. Muir, wives of the said Carlos C. Burr & D. D. Muir, do hereby severally grant, remise, release, and forever convey unto the said party of the second part all their right, title, and estate of dower in and to the foregoing-described premises.

And the said Carlos C. Burr and D. D. Muir, for themselves & their heirs, executors, and administrators, do hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the said Burr and Muir, at the time of the ensealing and delivery of these presents, are lawfully seized in their own right of a good, absolute, and indefeasible estate of inheritance, in fee-sim-

ple, of and in all and singular the above-granted premises, with the appurtenances, and have good right, full power, and lawful authority to grant and convey the same in the manner aforesaid, and that the same are now free and clear of and from all former and other grants, charges, assessments, taxes, and incumbrances of whatsoever nature, except taxes for the year 1880 and subsequent thereto.

And the said Carlos C. Burr & D. D. Muir, for themselves and their heirs, the above-granted premises, with the appurtenances, against all persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

611 In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CARLOS C. BURR. [SEAL.]
MARY E. BURR. [SEAL.]
D. D. MUIR. [SEAL.]
ARMISTA W. MUIR. [SEAL.]

Signed, sealed, & delivered in presence of—
GEO. P. TUCKER,
F. C. HARRISON.

Witnesses to signature of Armista W. Muir—
LOU A. WILSON,
CHAS. W. McILHON.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this twelfth day of November, A. D. 1880, before me, the subscriber, a notary public duly appointed, commissioned, and qualified for and residing in said county, personally appeared Carlos C. Burr and Mary E. Burr, his wife, and D. D. Muir, to me known to be the identical persons described in and who executed the foregoing conveyance as grantors, and they severally acknowledged the said instrument to be their and each of their voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal, at Lincoln, in said county, the day and year last above written.

[SEAL.] GEO. P. TUCKER,
Notary Public.

STATE OF WISCONSIN, } ss:
Iowa County, }

Personally came before me this 16th day of November, A. D. 1880, the above named Armista W. Muir, to me known to be the person who executed the foregoing instrument, and acknowledged the same. I further certify this acknowledgment is in accordance with the laws of the State of Wisconsin.

[SEAL.] CHARLES I. McILHON,
612 *Notary Public, Iowa County, Wisconsin.*

[Endorsed:] Carlos C. Burr & wife, D. D. Muir and wife to Allen W. Cogswell. Warranty deed. Filed for record the 20th day of

November, A. D. 1880, at 12.50 o'clock p. m. L. E. Cropsey, Co. clerk.

UNITED STATES OF AMERICA, } ss:
The State of Nebraska, Lancaster County, }

I, J. Stuart Dales, examiner U. S. C. C., dist. of Nebr., hereby certify that the above and foregoing is a true and correct copy of a deed as appears of record in the office of the clerk of said county in Deed Record No. 6, at page 105.

In testimony whereof I have hereunto set my hand, at the city of Lincoln, this 4 day of Dec., A. D. 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Nebr.

Endorsed: Warranty deed. Full covenant. Carlos C. Burr and D. D. Muir & wife to Allen W. Cogswell. State of Nebraska, Lancaster county, ss: Entered on numerical index and filed for record in the clerk's office of said county the 20th day of November, 1880, at 12 o'clock and 50 minutes p. m., and recorded in Book No. 6 of deeds, on page 105. L. E. Cropsey, county clerk.

EXHIBIT No. 3. (Witness Bell.)

This indenture, made this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and eighty-one, between Carlos C. Burr and Mary E. Burr, his wife, and Downie D. Muir and Armista W. Muir, his wife, of the county of Lancaster and State of Nebraska, of the first part, and Christian Bohlman, of the same place, of the second part, witnesseth: That the said parties of the first part,
for and in consideration of the sum of three hundred and
613 fifty dollars to them duly paid, the receipt whereof is hereby
acknowledged, have sold, and by the presents do grant, convey, and confirm, unto said party of the second part, his heirs and assigns, all that certain piece, parcel, or tract of land situated in Dawson's addition to South Lincoln, in the county of Lancaster and State of Nebraska, more particularly known and described as follows, to wit: Lots numbered ten (10), eleven (11), and twelve (12), in block numbered forty-four (44), in said Dawson's addition, according to the recorded plat thereof; together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, right, title, interest, and claim whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, with the appurtenances.

And the said Mary E. Burr and Armista W. Muir, wives of the said Carlos C. Burr and Downie D. Muir, do jointly and severally grant, remise, release, and forever convey unto the said party of the second part, all their right, title, and estate of dower in and to the foregoing-described premises.

And the said Carlos C. Burr and Downie D. Muir, for themselves, and their heirs, executors, and administrators, do hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the said Burr and Muir at the time of the enseal-

ing and delivery of these presents are lawfully seized in their own right of a good, absolute, and indefeasible estate of inheritance, in fee-simple, of and in all and singular the above-granted premises, with the appurtenances, and have good right, full power, and lawful authority to grant and convey the same in the manner aforesaid; and that the same are now free and clear of and from all former and other grants, charges, assessments, taxes, and incumbrances of whatsoever nature, except taxes which may have become a lien
614 since January 1, 1881, which taxes 2nd party assumes and agrees to pay.

And the said Carlos C. Burr and Downie D. Muir, for themselves and their heirs, the above granted premises, with the appurtenances, against all persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CARLOS C. BURR. [SEAL.]
MARY E. BURR. [SEAL.]
DOWNIE D. MUIR. [SEAL.]
ARMISTA W. MUIR. [SEAL.]

Signed, sealed, and delivered in presence of—
L. C. BURR.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this twenty-fifth day of April, A. D. 1881, before me, the subscriber, a notary public duly appointed, commissioned, and qualified for and residing in said county, personally appeared Carlos C. Burr and Mary E. Burr, his wife, and Downie D. Muir and Armista W. Muir, his wife, to me known to be the identical persons described in and who executed the foregoing conveyance as grantors, and they severally acknowledged the said instrument to be their and each of their voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal, at Lincoln, in said county, the day and year last above written.

[SEAL.] L. C. BURR,
Notary Public.

UNITED STATES OF AMERICA, } ss:
The State of Nebraska, Lancaster County, }

I, J. Stuart Dales, examiner U. S. C. C., dist. of Neb., hereby certify that the above and foregoing is a true and correct copy of
615 a deed as appears of record in the office of the clerk of said county, in Deed Record No. 6, at page 140.

In testimony whereof I have hereunto set my hand, at the city of Lincoln, this 4 day of Dec., A. D. 1882.

J. STEWART DALES,
Examiner U. S. C. C., Dist. of Nebraska.

Endorsed: Warranty deed. Full covenant. Carlos C. Burr and Downie D. Muir & wives to Christian Bohlman. State of Ne-

braska, Lancaster county, ss: Entered on numerical index and filed for record in the clerk's office of said county the 28th day of April, 1881, at 10 o'clock a. m., and recorded in Book No. 6 of deeds, on page 140. L. E. Cropsey, county clerk.

"EXHIBIT No. 4." (Witness Bell.)

This indenture, made this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and eighty-one, between Carlos B. Burr and Mary E. Burr, his wife, and D. D. Muir and Armista W. Muir, his wife, of the county of Lancaster and State of Nebraska, of the first part, and Patrick Lyons, of the same place, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one hundred dollars to them duly paid, the receipt whereof is hereby acknowledged, have sold, and by these presents do grant, convey, and confirm, unto said party of the second part, his heirs and assigns, all that certain piece, parcel, or tract of land situated in Dawson's addition to South Lincoln, in the county of Lancaster and State of Nebraska, more particularly known and described as follows, to wit: Lot numbered nine (9), in block numbered forty-four (44), according to the recorded plat thereof; together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, right, title, interest, and claim whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, with the appurtenances.

616 And the said Mary E. Burr and Armista W. Muir, wives of the said Carlos C. Burr and D. D. Muir, do jointly and severally grant, remise, release, and forever convey unto the said party of the second part all their right, title, and estate of dower in and to the foregoing-described premises.

And the said Carlos C. Burr and D. D. Muir, for themselves and their heirs, executors, and administrators, do hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the said Carlos C. Burr and D. D. Muir, at the time of the ensealing and delivery of these presents, are lawfully seized in their own right of a good, absolute, and indefeasible estate of inheritance in fee-simple of and in all and singular the above-granted premises, with the appurtenances, and have good right, full power, and lawful authority to grant and convey the same in the manner aforesaid, and that the same are now free and clear of and from all former and other grants, charges, assessments, taxes, and incumbrances of whatsoever nature, except taxes which may have become a lien since January 1, 1881.

And the said Carlos C. Burr and D. D. Muir, for themselves and their heirs, the above-granted premises, with the appurtenances, against all persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CARLOS C. BURR. [SEAL.]
MARY E. BURR. [SEAL.]
DOWNIE D. MUIR. [SEAL.]
ARMISTA W. MUIR. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. R. KELLY.

617 THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 25th day of May, A. D. 1881, before me, the subscriber, a notary public duly appointed, commissioned, and qualified for and residing in said county, personally appeared Carlos C. Burr and Mary E. Burr, his wife, and D. D. Muir and Armista W. Muir, his wife, to me known to be the identical persons described in and who executed the foregoing conveyance as grantors, and they severally acknowledged the said instrument to be their voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal, at Lincoln, in said county, the day and year last above written.

[SEAL.] WM. R. KELLY,
Notary Public.

UNITED STATES OF AMERICA, } ss:
The State of Nebraska, Lancaster County, }

I, J. Stuart Dales, examiner U. S. C. C., dist. of Nebraska, hereby certify that the above and foregoing is a true and correct copy of a deed as appears of record in the office of the clerk of said county, in Deed Record No. 6, at page 149.

In testimony whereof I have hereunto set my hand, at the city of Lincoln, this 4th day of Dec., A. D. 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Nebr.

Endorsed: Warranty deed. Full covenant. C. C. Burr & D. D. Muir and wives to Patrick Lyons. State of Nebraska, Lancaster county, ss: Entered on numerical index and filed for record in the clerk's office of said county the 30th day of May, A. D. 1881, at 8 o'clock and 20 minutes a. m., and recorded in Book No. 6 of
618 deeds, on page 149. L. E. Cropsey, county clerk.

EXHIBIT No. 5. (Witness Bell.)

This indenture, made this thirtieth day of March, in the year of our Lord one thousand eight hundred and eighty, between Carlos C. Burr and Mary E. Burr, his wife, and D. D. Muir, unmarried man, of the county of Lancaster and State of Nebraska, of the first part, and Rhoda A. Prindle, of the same place, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one hundred dollars to them duly paid, the receipt whereof is hereby acknowledged, have sold, and by these

presents do grant, convey, and confirm, unto said party of the second part, her heirs and assigns, all that certain piece, parcel, or tract of land situated in Dawson's addition to South Lincoln, in the county of Lancaster and State of Nebraska, more particularly known and described as follows, to wit: Lots numbered five (5) and (6), in block numbered forty-nine (49), in said Dawson's addition to South Lincoln, according to the plat thereof recorded in clerk's office of said Lancaster county—

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, right, title, interest, and claim whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, with the appurtenances.

And the said Mary E. Burr, wife of the said Carlos C. Burr, does hereby grant, remise, release, and forever convey unto the said party of the second part all her right, title, and estate of dower in and to the foregoing-described premises.

And the said Carlos C. Burr and D. D. Muir, for themselves, their heirs, executors, and administrators, do hereby covenant and
619 agree to and with the said party of the second part, her heirs and assigns, that the said Carlos C. Burr and D. D. Muir, at the time of the ensealing and delivery of these presents, *they* are lawfully seized, in their own right, of a good, absolute, and indefeasible estate of inheritance, in fee-simple, of and in all and singular the above-granted premises, with the appurtenances, and have good right, full power, and lawful authority to grant and convey the same in the manner aforesaid; and that the same are now free and clear of and from all former and other grants, charges, assessments, taxes, and incumbrances of whatsoever nature, except taxes which may have become a lien since January 1st, 1880.

And the said Carlos C. Burr and D. D. Muir, [for] themselves and their heirs, the above-granted premises, with the appurtenances, against all persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CARLOS C. BURR. [SEAL.]
MARY E. BURR. [SEAL.]
D. D. MUIR. [SEAL.]

Signed, sealed, and delivered in presence of—
L. C. BURR.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this thirtieth day of March, A. D. 1880, before the subscriber, a notary public duly appointed, commissioned, and qualified for and residing in said county, personally appeared Carlos C. Burr and Mary E. Burr, his wife, and D. D. Muir, an unmarried man, to me known to be the identical persons described in and who executed the foregoing conveyance as grantors, and they severally acknowl-

edged the said instrument to be their and each of their voluntary act and deed.

620 In testimony whereof I have hereunto set my hand and notarial seal, at Lincoln, in said county, the day and year last above written.

[SEAL.] L. C. BURR,
Notary Public.

UNITED STATES OF AMERICA. }
The State of Nebraska, Lancaster County, } *ss:*

I, J. Stuart Dales, examiner U. S. C. C., dist. of Nebraska, hereby certify that the above and foregoing is a true and correct copy of a deed as appears of record in the office of the clerk of said county, in Deed Record No. 6, at page 30.

In testimony whereof I have hereunto set my hand at the city of Lincoln, this 4th day of Dec., A. D. 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

Endorsed: Warranty deed, full covenant. Carlos C. Burr and wife, D. D. Muir, an unmarried man, to Rhoda A Prindle. State of Nebraska, Lancaster county, ss. Entered on numerical index and filed for record in the clerk's office of said county the 6th day of April, 1880, at 9 o'clock and 30 minutes a. m., and recorded in Book No. 6 of deeds, on page 30. L. E. Cropsey, county clerk.

EXHIBIT No. 6. (Witness Bell.)

Warranty Deed. Carlos C. Barr et ux. to C. P. Williams. Filed for Record Sept. 30, '78, 2.25 *p. m.* ——— ———, *Co. Clerk.* ——— ———, *Deputy.*

This indenture, made this twenty-second day of August, in the year of our Lord one thousand eight hundred and seventy-eight, between Carlos C. Burr and Mary E. Burr, his wife, of Lancaster county, Nebraska, of the first part, and C. P. Williams, of the same place, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum

621 of one hundred dollars to them duly paid, the receipt whereof is hereby acknowledged, have sold, and by these presents do grant, convey, and confirm unto the said party of the second part, his heirs and assigns, all lots numbered two (2), three (3), and four (4), in block numbered twenty-two (22), in Dawson's addition to South Lincoln, in Lancaster county, Nebraska, according to the recorded plat thereof, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to have and to hold the above-described premises, together with all the estate, right, title, interest, and claim whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, with the appurtenances, and to his heirs and assigns forever, and the said Mary E. Burr, wife of the said Carlos C. Burr, hereby releases and relinquishes all her right of dower in and to the above-described

premises, and the said Carlos C. Burr, for himself and his heirs, executors, and administrators, does hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the said Carlos C. Burr at the time of the ensealing and delivery of these presents *he* is lawfully seized in his own right of a good, absolute, and indefeasible estate of inheritance in fee-simple of and in all and singular the above-granted premises, with the appurtenances, and has good right, full power, and lawful authority to grant and convey the same in the manner aforesaid, and that the same are now free and clear of and from all former and other grants, charges, assessments, taxes, and incumbrances of whatsoever nature, except taxes which may have become a lien since January 1, 1878, which taxes second party hereby assumes and agrees to pay, and the said Carlos C. Burr, for himself and his heirs, the above-granted premises, with the appurtenances, against all persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

622 In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CARLOS C. BURR. [SEAL.]
MARY E. BURR. [SEAL.]

Signed, sealed, and delivered in presence of—
L. C. BURR.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 2nd day of August, A. D. 1878, before me, L. C. Burr, a notary public duly appointed, commissioned, and qualified for and residing in said county, personally appeared Carlos C. Burr and Mary E. Burr, his wife, to me known to be the identical persons described in and who executed the foregoing conveyance as grantors, and they acknowledged said instrument to be their voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal, at Lincoln, in said county of Lancaster, the day and year last above written.

[SEAL.]

L. C. BURR,
Notary Public.

UNITED STATES OF AMERICA, } ss:
The State of Nebraska, Lancaster County, }

I, J. Stuart Dales, examiner U. S. C. C., dist. Neb., hereby certify that the above and foregoing is a true and correct copy of a deed as appears of record in the office of the clerk of said county in Deed Record Y, at page 207.

In testimony whereof I have hereunto set my hand, at the city of Lincoln, this 4 day of Dec., A. D. 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist of Nebr.

W. W. HOLMES, being produced as a witness on behalf of complainants and of lawful age, being first duly sworn, on his
623 oath says:

Int. 1. State your name, age, place of residence, and occupation.

Ans. My name is Wm. W. Holmes; age, 47 years; place of residence, Lincoln, Nebraska; occupation, broker.

Int. 2. How long have you resided in Lincoln?

Ans. Thirteen years last March.

Int. 3. Were you acquainted with the value of real estate in Lincoln in April, 1870?

Counsel for Giles objects because under the stipulation filed no evidence could or would be taken except on the amended bill.

Ans. I was.

Int. 4. Did you know the value of the west half of lot 3 and all of lots 4, 5, & 6, in block 54, in the city of Lincoln, in April, 1870?

Ans. I think so.

Int. 5. Do you know now what — the value of that property at that time?

Ans. Yes, sir.

Int. 6. State the value of that property at that time.

Counsel for Giles objects, for that by the stipulation no such evidence could be taken; also that the complainants have introduced the deed showing the consideration and value of the premises to Cody's block, and that the recitals in the deed here in evidence bind the complainants and cannot be contradicted or disputed by this witness.

Ans. I would place it at about $9,000.

Cross-examination:

Int. 7. Do you swear that you know or that you think you know the value of real estate at that time?

624 Ans. I will swear that I knew the value of real estate at that time.

Int. 8. Do you swear that you know it now?

Ans. Not as closely as I did at that time; it is a matter of memory now.

Int. 9. What became of the improvements that were upon these premises in 1870?

Objected to by complainant's counsel as incompetent, immaterial and irrelevant, and not proper cross-ex.

Ans. My recollection is that they were torn down during the spring or summer of 1870.

Int. 10. What was the value of the stone house that was torn down at that time upon these premises?

Objected to by complainant same as last above.

Ans. I should say from $1,000 to $1,200.

Int. 11. Do you include this amount in the valuation of $9,000 that you put upon the property?

Ans. I do.

Int. 12. What was the value of the frame building that S. W. Little tore down or removed at the time he built the brick building now standing there?

Objected to by complainant same as last above, and for the further reason that the frame building was placed upon the property after the date of the valuation fixed by the witness.

Ans. I would place it at about four hundred dollars.

W. W. HOLMES.

Subscribed in my presence and sworn to before me this 2nd day of Dec., 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Nebr.

625 CHAS. T. BOGGS, being produced as a witness on behalf of respondent, of lawful age, and being first duly sworn, on his oath says:

Int. 1. State your name, age, place of residence, and occupation.

Ans. My name is Chas. T. Boggs; age, 36 years; place of residence, Lincoln, Nebraska; occupation, insurance agent, &c.

Int. 2. How long have you known D. B. Alexander and S. W. Little?

Ans. Ten or eleven years.

Int. 3. Do you know whether there is any insurance upon the buildings situated on the west half of lot 3, and all of 4, 5, & 6, in block 54, in the city of Lincoln? If so, state the amount on each building.

Ans. I do know. There is $1,000 insurance on the building on lot 6 in favor of S. W. Little. I do not know of any more.

Int. 4. Is there anything said in the policy as to who is the owner of the legal title to the premises?

Ans. There is not.

Int. 5. There is no unusual clause in this policy, it being simply one running to S. W. Little, is it not?

Ans. No unusual clause. The policy runs directly to S. W. Little.

Int. 6. Do you know, and has not S. W. Little or D. B. Alexander, or either of them, told you that it was a rule of theirs not to insure their buildings?

Ans. I have carried insurance on some of Little's property for the past 6 or 7 years. I do not know anything about Alexander's business in this respect; have never insured any property for him.

CHAS. T. BOGGS.

626 Subscribed in my presence and sworn to before me this 2nd day of December, 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Nebr.

Counsel for Giles now offered in evidence a deed from Melita C. D. Tillman to Ezekiel Giles, and a marriage certificate of Joel W. Tillman and Melida Margaret Dawson, which are hereto attached by the examiner and made a part hereof and marked Exhibits "C" & "D."

To the introduction of which in evidence counsel for complainant objects as immaterial and irrelevant.

"EXHIBIT C."

This indenture, made this second day of January, A. D. 1882, between Melita C. Dawson Tillman, wife of Joseph Tillman, late Melita C. Dawson, daughter of Jacob Dawson, deceased, of Cass county, Nebraska, party of the first part, and Ezekiel Giles, of Clay county, Iowa, party of the second part, witnesseth: That the party of the first part, in consideration of one dollar to her in hand paid, the receipt whereof is hereby acknowledged, has sold, and by these presents does grant, bargain, sell, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever all those certain tracts, pieces, and parcels of land more particularly known and described as follows, to wit: All those certain tracts, pieces, and parcels of land situated in the county of Lancaster and State of Nebraska, more particularly known and described as follows, to wit: The west half of the southeast quarter of section nineteen, township ten north, range seven east, of the sixth principal meridian, containing 80 acres; the southeast quarter of the southeast quarter of section thirty-five, township ten north, range six east, of the sixth principal meridian, containing 40 acres;
627 the northwest quarter of the southwest quarter of section six, township ten north, range seven east, of the sixth principal meridian, containing 40 acres; the east half of the northeast quarter of section thirty-five, township ten north, range six east, of the sixth principal meridian, containing 80 acres; the west half of the northwest quarter of section twenty-four, township ten north, range six east, of the sixth principal meridian, containing 80 acres; also the west half of the northeast quarter of section nine, township nine north, range thirteen east, of the sixth principal meridian, lying and being in Otoe county, Nebraska, containing 80 acres; also the north fifty feet of lot number nineteen of block number fifty-four of the city of Lincoln, Lancaster county, Nebraska, according to the original survey and plat of the town, now city, of Lincoln aforesaid, being all that tract of land bounded and described as follows: Beginning at the northwest corner of said lot nineteen, running thence east fifty feet; thence south on the east line of said lot fifty feet; thence west fifty feet; thence north fifty feet to the place of beginning; also the west half of lot three, and all of lots four, five, and six, in said block fifty-four, in said city of Lincoln; also all of lot six (6), in block forty-one, in said city of Lincoln, according to the original survey and plat of the town, now city, of Lincoln aforesaid; together with all and singular the tenements and hereditaments and appurtenances thereto belonging or in anywise appertaining;

and also all the estate, right, title, interest, claim, and demand, as well in law as in equity, which the said party of the first part now has or ever has had in and to the and each of the above-described parcels of land, with the appurtenances, and especially such as accrued to her as the heir or devisee of Jacob Dawson aforesaid.

This instrument is made and executed by the said party of the first part with the intention and for the purpose to, and she hereby
628 does by these presents, ratify and confirm in all things and respects a certain conveyance made by and between herself as Melita C. Dawson and others (who were children and heirs-at-law of Jacob Dawson aforesaid), parties of the first part, and Lionel C. Burr and Hiland H. Wheeler, parties of the second part, dated the 15th day of September, A. D. 1879, and acknowledged the third day of December, 1879, at the time and — execution of which said conveyance she was a minor, unmarried, and under the age of eighteen years. This instrument is also made and executed by the parties of the first part with the intention and for the purpose, and by these presents she hereby declares she does, and does, disaffirm, annull, set aside, avoid, and cancel in all respects, as far as in her power lies, or as she legally can do, or so far as she is concerned or interested in a certain conveyance, executed by herself as Melita C. Dawson and others (who were children and heirs-at-law of Jacob Dawson aforesaid), parties of the first part, and Herman H. Schaberg, party of the second part, dated and executed September 12th, 1878, at which said time and date of execution she, the said Melita C. Dawson, was a minor, unmarried, and under the age of eighteen years, and recorded in the county clerk's office of Lancaster county, Nebraska, in books of deeds, at page 336 of the deed records of said Lancaster county, which said deed was executed by her while a minor as aforesaid, and purported to convey lots five and six, in block forty-one, in said city of Lincoln. This instrument is made for the further purpose of confirming the title to all the above-described tracts, pieces, and parcels of land in the aforesaid Ezekiel Giles, grantee and assignee of the said Burr, and the said Wheeler as aforesaid.

In witness whereof the party of the first part has hereunto set her hand and seal the day and year first above written.

MELITA C. TILMAN.

629 MELITA C. DAWSON TILMAN. [SEAL.]

Signed, sealed, & delivered in the presence of—
JOHN MURFIN.

The words "so far," in line 10 of this page, interlined before execution.

STATE OF NEBRASKA, }
County of Cass, } *ss:*

On this thirteenth day of January, A. D. 1882, before me, John Murfin, a notary public duly commissioned and qualified for and residing in said county, personally came Melita C. Dawson Tillman, to me known to be the identical person described in and whose

name is affixed to the foregoing instrument as grantor, and acknowledged that she executed the same and the instrument to be her voluntary act and deed, and for the purposes therein set forth.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] JOHN MURFIN,
Notary Public.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the annexed copy of the deed of Melita C. D. Tillman to Ezekiel Giles in the case of S. W. Little *et al. vs.* Ezekiel Giles *et al.* with the original on file in this office, and that the same is [a] correct transcript thereof, and of the whole of said original.

In testimony whereof I have caused the seal of said court to be affixed at the city of Omaha, in said district, this 2nd day of July, 1884.

[SEAL.] ELMER D. FRANK, *Clerk.*

630 Endorsed: "C." Deed C. Melita C. D. Tillman to Ezekiel Giles. State of Nebraska, Lancster county, ss: Filed for record in the clerk's office of said county the 14 day of Jan'y, 1882, at 4 o'clock and — minutes p. m., Book 11, pages 279 and 281. J. H. McClay, county clerk. Filed Dec. 2, 1882. J. Stuart Dales, ex'r U. S. C. C., dist. of Nebr.

Marriage License.

THE STATE OF NEBRASKA, } ss:
Cass County, }

The State of Nebraska to to any person legally authorized to solemnize marriages, Greeting:

You are hereby authorized to join in the holy bonds of matrimony and to celebrate within said county the rites and ceremonies of marriage between Mr. Joel William Tilman and Miss Melita Margaret Dawson.

The father's name of the said Joel William Tilman is Silas W. Tilman, and the maiden name of his mother is Susannah Barrett, and the father's name of said Melida Margaret Dawson is Jacob Dawson, and the maiden name of her mother is Editha J. Ross. The said Joel William Tilman resides in the county of Lancaster and State of Nebraska; is aged twenty years; was born in Marion Co., Indiana, and is a white person. The said Melida Margaret Dawson resides in the county of Cass and State of Nebraska; is aged eighteen years; was born in Lancaster Co., Neb., and is also a white person.

And these presents shall be your good and sufficient warrant, and you are required to return this license to me within three months from the celebration of such marriage, with a certificate of the same

appended thereto signed by you, under the penalty of five hundred dollars.

631 In testimony whereof I have hereunto set my hand and affixed the seal of the county court of said county of Cass this 22 day of December, A. D. 1881.

[SEAL.] A. N. SULLIVAN,
County Judge.

Written consent of parents of groom and bride filed.

A. N. SULLIVAN,
Co. Judge.

Marriage Certificate.

THE STATE OF NEBRASKA, } ss:
—— *County,* }

Be it remembered that at Mrs. Pickering's, in said county of Cass, on the 25th day of December, A. D. 1881, Mr. Joel William Tilman, and Miss Melida Casanda Dawson, named in the foregoing license, were legally united in marriage by me in the presence of George Keller and Mrs. Pickering, residing in the county of Cass and State of Nebraska, and Albert Dawson, residing in the county of Cass and State of Nebraska.

Witness my hand this first day of February, A. D. 1882.

WALETE B. HARRIS,
Minister Cumberland Presbyterian Church.

THE STATE OF NEBRASKA, } ss:
Cass County, }

I, Jno. Johnson, county judge of said county, do hereby certify the within to be a true and accurate copy of the record in my office found in marriage record "D," on page 530.

In testimony whereof I have hereunto set my hand and the seal of said county court this 23rd day of Nov., A. D. 1882.

[SEAL.] J. W. JOHNSON,
County Judge.

Filed Dec. 2, 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

W. W. WILSON, being produced as a witness on behalf of complainant, of lawful age, and being first duly sworn, says:

Int. 1. Where do you reside?
Ans. In Lincoln, Nebraska.
632 Int. 2. How long have you resided here?
Ans. About 11 years.
Int. 3. What is your age?
Ans. 58 years.
Int. 4. Married or single?
Ans. Single.
Int. 5. Ever been married?
Ans. No.

W. W. WILSON.

Subscribed in my presence and sworn to before me this 2nd day of December, 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Nebr.

The further taking of testimony herein is by me adjourned by the consent of counsel for complainant and respondents until 7 o'clock p. m. Dec. 2, 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

G. E. TORREY, being produced as a witness on behalf of respondents, of lawful age, and being first duly sworn, on his oath, says:

Int. 1. State your name, age, place of residence, and occupation.

Ans. My name is G. E. Torrey; age, 45 years; place of residence, Lincoln, Nebraska; occupation, deputy county treasurer of Lancaster county, Nebr.

Int. 2. Have you examined the tax list of the county of Lancaster upon all the premises hereinafter named as to the fact of whether the taxes are delinquent or sold or paid for the years 1880 & 1881?

Ans. I have.

633 Int. 3. And does the list that you hand to the examiner, consisting of seven sheets, show a true and correct situation of each one of the several lots & blocks as mentioned in the last question?

Ans. It does.

GEO. E. TORREY.

Subscribed in my presence and sworn to before me this 2nd day of December, 1882.

J. STUART DALES,
Examiner, U. S. C. C., Dist. of Neb.

The following is a true and correct copy of the list or paper produced to me by the witness Torrey and attached hereto by me at request of counsel for respondent Giles, viz:

	1881.	1880.
Lot 17, N. W., S. E. 19, 10, 7	3 64	Paid.
B. of 19, 20, & 21 bl'k 54, Daw. add.	12 95	Paid.
Lot 2, bl'k 22	97	89
" 3, " 22	97	88
" 4, " "	97	88
" 1, bl'k 23	97	Paid.
" 2, " "	97	Paid.
" 2, " 26	16 19	Paid.
" 11, " "	2 59	1 48
" 1, " 27	3 56	Paid.
" 2, " 27	3 24	Paid.
" 1, " 28	3 56	Paid.
" 2, " "	3 24	Paid.
" 11, " "	3 24	Paid.

			1881.	1880.
Lot	12,	bl'k 28	3 24	Paid.
"	1,	" 29	23 96	Paid.
"	2,	" 29	1 94	Paid.
"	5,	" "	1 94	Paid.
"	6,	" "	2 59	Paid.
"	9,	" "	3 24	Paid.
"	1,	" 30	19 42	13 30
"	2,	" "	1 94	1 48
"	4,	" "		
"	5,	" "	2 26	1 48
"	6,	" "	2 59	1 77
"	9,	" 32	1 62	Paid.
"	10,	" "	1 62	1 18
"	2,	" 33	4 53	Paid.
"	3,	" "	1 62	1 18
"	6,	" "	1 94	1 77
"	7,	" "	1 62	1 18
Lot	7,	bl'k 30	2 59	Paid.
"	8,	" "	1 94	Paid.
"	9,	" "	1 94	Paid.
"	10,	" "	1 62	Paid.
	11,		1 29	Paid.
"	12,	"	1 29	Paid.
"	1,	bl'k 31	1 94	Paid.
"	2,	" "	1 94	1 18
"	6,	" "	3 88	Paid.
"	7,	" "	1 94	1 48
Lot	8,	" "	1 62	1 18
"	9,	" "	1 62	1 18
"	10,	" "	1 62	Paid.
"	11,	" "	1 62	Paid.
"	12,	" "	1 94	Paid.
"	1,	bl'k 32	Sold.	Paid.
"	2,	" "	Sold.	Paid.
"	4,	" "	7 77	5 91
"	5,	" "	1 62	Paid.
"	6,	" "	16 19	Paid.
"	7,	" "	1 94	Paid.
"	8,	" "	1 62	Paid.
"	1,	" 42	1 94	Paid.
"	2,	" "	1 62	Paid.
"	3,	" "	1 62	Paid.
"	5,	" "	24 28	Paid.
"	7,	" "	1 62	Paid.
	Lot	8, bl'k 42	4 85	Paid.
634	"	8, " 32	1 29	Paid.
	"	9, " "	1 29	Paid.
Lot	10,	bl'k 32	1 29	Paid.
"	11,	" "	1 29	Paid.
"	12,	" "	8 09	Paid.

	1881.	1880.
Lot 5, bl'k 35	1 29	Paid.
" 6, " "	1 29	Paid.
" 7, " "	1 29	Paid.
" 8, " "	1 29	Paid.
" 1, " 36	3 88	89
" 2, " "	97	89
" 3, " "	4 85	Paid.
" 4, " "	97	Paid.
" 1, " 38	1 94	Paid.
" 2, " "	1 62	Paid.
" 3, " "	1 62	Paid.
" 4, " "	1 62	88
" 5, " "	1 62	88
" 6, " "	1 62	1 48
" 1, " 40	2 59	1 77
" 2, " "	1 94	1 48
" 3, " "	1 94	1 48
" 4, " "	1 94	1 48
" 5, " "	1 94	1 18
" 6, " "	2 26	1 18
" 7, " "	2 26	Paid.
" 8, " "	Paid.	Paid.
" 9, " "	Paid.	Paid.
" 1, bl'k 41	2 26	Paid.
" 2, " "	1 94	Paid.
" 3, " "	1 94	Paid.
" 4, " "	1 94	Paid.
" 5, " "	1 94	Paid.
" 6, " "	2 26	Paid.
Lot 9, bl'k 42	2 26	Paid.
" 10, " "	1 94	Paid.
" 11, " "	1 94	Paid.
" 12, " "	1 94	Paid.
All of bl'k 43	All sold.	Paid.
Lot 1, bl'k 44	1 29	Paid.
" 2, " "	1 29	Paid.
" 3, " "	1 29	Paid.
" 9, " "	1 29	Paid.
" 7, " 45	1 29	1 18
" 8, " "	1 29	1 18
" 9, " "	4 85	4 43
" 10, " "	5 83	Paid.
" 11, " "	1 29	P'd.
" 12, " "	8 09	Paid.
" 1, " 47	1 29	1 18
" 2, " "	97	88
" 3, " "	97	88
" 4, " "	97	88
" 5, " "	97	88
" 6, " "	10 36	8 86

	1881.	1880.
Lot 7, bl'k 47	1 29	Paid.
" 8, " "	97	Paid.
" 9, " "	97	Paid.
" 10, " "	97	Paid.
Lot 1, bl'k 48	97	Paid.
" 2, " "	97	Paid.
" 3, " "	97	Paid.
" 4, " "	97	Paid.
" 10, " "	4 86	Paid.

635 UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify that the above and foregoing is a true and perfect copy of the list or statement of taxes for the years 1881 & 1880 upon the property therein described in and for Lancaster county, Nebraska, as the same was produced to me, and identified and sworn to by the witness Torrey upon his examination herein.

Witness my hand this 2 day of Dec., 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. Neb.

Dec. 2. 1882.—At the request of counsel for respondent Giles, and by consent of parties, at 9 o'clock p. m. the further taking of testimony herein is adjourned by me until Wednesday, Dec. 6th, 1882, at 2 o'clock p. m.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

Dec. 6, 1882.—At 2 o'clock p. m., by consent of solicitors for parties herein, the further taking of testimony in this cause is by me hereby adjourned until Thursday, Dec. 7th, 1882, at 2 o'clock p. m.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

Dec. 7th, 1882.—At 2 o'clock p. m., by agreement of parties herein the further taking of testimony herein is hereby adjourned until Friday, Dec. 8, 1882, at 2 o'clock p. m.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

Dec. 8th, 1882.—At 2 o'clock, by the agreement and stipulation of the parties hereto filed this day, the further taking of
636 testimony herein is hereby adjourned until Saturday, Dec. 9, 1882, at 9 o'clock a. m.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

Dec. 9, 1882, at 9 o'clock a. m., examination of witnesses herein resumed according to stipulation of counsel in this cause made before me Dec. 8, 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

Appearances: Marquette, Deweese & Hall, Harwood & Ames, and W. J. Lamb, for complainants; L. C. Burr, for respondent Giles.

EDITHA JANE PICKERING, being produced as a witness on behalf of respondents and of lawful age, being first duly sworn, desposes and says:

Int. State your name, age, place of residence, and occupation.

Ans. My name is Editha Jane Dawson Pickering; age, 55 years; place of residence, Factoryville, Cass county, Nebraska; occupation, farming.

Int. Are you the widow of the late Jacob Dawson, deceased?

Ans. I am.

Int. Is the Bible that is now before the examiner the family Bible of the late Jacob Dawson and yourself, and does the Bible contain a family record showing the marriages, births, & deaths of certain of the family of yourself and former husband?

Counsel for complainant objects to first part of the question as leading, and the last part is objected to as asking for contents of the book. The book itself is the best evidence to show what it contains.

Ans. It is. It does of most of the family. The two last
637 deaths, I believe, are not recorded.

Counsel for respondents now offer in evidence the whole of the family record as shown at pages 97, 98, & 100, as marked by the examiner of said family Bible, immediately following the portion of same known as the Old Testament, certified copies of which are by the examiner hereto attached and made a part hereof as Exhibit "E," to the introduction of which counsel for complainants objects for the reason that it has not been shown by whom the family record has been kept; the handwriting has not been identified.

Int. Mrs. Dawson, you may now look at page 97 and state to the court when the writing was made and by whom it was made.

Ans. By Jacob Dawson I think. I think it was made before we came to Lincoln—when we lived at the river.

Int. Can you state about the year that you and Jacob Dawson and family came to Lancaster county, Nebraska?

Ans. I think about 17 years ago, as near as I can remember.

Int. And it was before that time that he made these entries in this family record?

Ans. As near as I can remember.

Int. Look at page 98 of the family record and state if you know when and by whom the entries were made there.

Ans. Jacob Dawson, I think, wrote down the births on that page. It was written down as far as to Melita Cassenda Dawson before we left the river, and the other younger children were entered afterwards.

Int. By whom and when, as best you can remember, were the entries made on page 100?

638. Ans. Mr. Dawson wrote the entry about Mary Amanda Dawson, & William Dawson wrote the next entry; I wrote the entry of death of Jacob Dawson.

Int. Can you tell when and by whom the Bible was purchased?

Ans. I think it was bought 17 or 18 years ago—when we lived at the river—by Jacob Dawson.

Int. In whose possession and by whom has this family record been kept?

Ans. By me.

Int. At the death of Jacob Dawson were there any children of himself and you living. If so, name them.

Ans. They were all living except one, at that time; Mary Amanda was dead at that time; John Hampton, William Ross, Albert Lincoln, Evaline Margaret, Melita Cassanda, Minnie Sylvina were living at that time.

Int. State when each of your children you have named were born.

Ans. John Hampton, Dec. 3, 1848; Mary Amanda, March 22, 1851; William Ross, Sept 12, 1853; Albert Dawson, Jan'y 16, 1856; Evaline Margaret, July 2, 1860; Melita Cassanda, March 22, 1864; Minnie Sylvana, Nov. 9, 1866.

Int. State if any of these children are dead and the dates when they died.

Ans. Mary Amanda died Aug. 9, 1852; John Hampton died Nov. 3, 1872; Evaline Margaret, Sept. 15, 1880; William Ross died Nov. 14, 1880.

Int. Had he, John Hampton Dawson, children living when he died?

Ans. No, sir.

Int. Where did you live at the death of Jacob Dawson?

Ans. I lived in Lincoln.

Int. Did you live in the house called the Stone House, which was nearly opposite the place where the post office now is?

639 Ans. Yes, sir.

Int. What kind of a house was that for convenience & health & what did you do with the house after you moved out of it?

Complainant's counsel objects as being incompetent, and not admissible under the stipulatian for extending time of taking testimony herein.

Ans. I think it was a healthy house and very convenient; had basement and upstairs story and good cellar. I rented the house after leaving it.

Int. To whom did you rent, and for how much per month?

Counsel for complainant objects same as last above.

Ans. When I moved out of the house Dr Robbins was in one room, Mr. Clark in another, and Mr. Hyatt in another, and Mrs. Russell had a room in the basement; not sure as to Mr. Clark being there, but he had it rented and did live there awhile. One room brought $15 per month, 2 rooms for $10 each, and one downstairs for $5 or $8 per month, I don't remember which.

Int. Are you acquainted with one Henry N. Pickering? If so, where did you become acquainted with him?

A. I am; I first became acquainted with him in Ohio, in early life.

Int. If within the past few years you have met Mr. Pickering, you may state the circumstances of your meeting.

Ans. I met him in Lincoln; he came to our house.

Int. You and Mr. Pickering were afterwards married, were you not?

Ans. Yes.

Int. Did you ever request Mr. Pickering to destroy any letters that you had written to him?

640 Ans. Not that I remember of.

Int. About the 7th day of February, 1879, did you meet Mr. Pickering in Lincoln, Nebr.?

Objected to as leading.

Ans. I did.

Int. Mr. Pickering has sworn in this case in words and substance as follows: that on that day he had a conversation with you, and said: "We talked about marrying; I told her I had come out to marry; that it was my business here to marry. She said she could not marry at this time; that she could not marry until she sold her property; that her lawyer had advised her (meaning you) not to marry until you had sold all of your property." State, Mrs. Dawson, if you had this conversation with Mr. Pickering at that time.

Objected to as leading and calculating to mislead the witness by reciting some pretended testimony of Pickering, and not admissible under the stipulation.

Ans. I never told him that my lawyer advised me to sell the property before I should marry; we talked about marrying.

Int. Did you at any time or place tell Mr. Pickering anything about your property or conveying your property before you got married to him?

Ans. I don't remember of telling him that I wanted to convey the property before I got married to him.

Int. Did you speak several times to him and tell him that you had been advised by your lawyer to sell your property before you got married to him?

Ans. No, sir.

Int. Mr. Pickering has sworn in words and substance this, that the reason why you put off marrying was because some writ-

641 ings were to be signed, a contract with Burr, & that the reason why the wedding was put off was that these papers had to be signed before you were married. Did you tell Mr. Pickering so?

Objected to as leading, and calling for conclusion & not for facts.

Ans. No, sir.

Same objection to answer.

Int. Is it a fact that you said so?

Objected to as leading.

Ans. It is a fact that I never told him so.

Int. Did you tell or have any conversation with Mr. Pickering as to any contract that your children had with Burr?

Ans. No, sir.

Int. Did you and Wm. Dawson, your son, have a conversation standing by the window in your house a short time after you were married to Mr. P., when Wm. read a letter to you & Mr. P. was standing on the outside of the window, and in that conversation did you say "Don't let Mr. Pickering know about it, that I married him by the advice of a lawyer?"

Objected to as leading.

Ans. No, sir; I never had any such conversation with him about it.

Int. Did you tell Mr. P., or your son Wm. or Albert, or any person at any time or place that the understanding was that there was to be a marriage, so your children could get the property?

Ans. No, sir; I did not.

Int. Did you ever have such an understanding with any person that your purpose of marriage was that your children could get this property?

Objected to as calling for an opinion and conclusive and not asking for facts.

Ans. No, sir.

642 Int. Mr. Pickering has sworn that he heard you say to your children or one of them that your understanding was that there was to be a marriage, so they could get back the property; is it true or not?

Objected to as not calling for facts, leading, and no foundation laid for impeachment.

Ans. It is not true.

Int. State to the court who induced you to marry with Mr. Pickering?

Objected to [as] irrelevant, immaterial, and not calling for facts.

Ans. No one.

Int. Did you ever have any talk with L. C. Burr or H. H. Wheeler about your marriage with Mr. Pickering before you got married?

Ans. No, sir.

Int. State what they or either of them knew of your intended marriage so far as you know.

Ans. I don't know as they knew anything about it; I never spoke to them about it.

Int. What advice did Burr or Wheeler give or offer to you about your intended marriage with Mr. Pickering?

Ans. Not any.

Int. State what counsel or advice you asked of them or either of them about your intended marriage?

Ans. I never asked any counsel or advice from either of them.

Int. Whom, if anybody, did you send to them for advice about your intended marriage?

Ans. I never sent any one.

Int. With whom did you confederate and combine and conspire with in order that you might marry with Mr. Pickering; name
643 the persons—all of them that you had any talk with whatever about your intended marriage with him?

Objected to as calling for opinion and conclusion of the witness.

Ans. No one.

Int. Can you tell how many letters you wrote to Mr. Pickering?

Ans. I do not remember.

Int. How many letters did you receive from him?

Ans. I do not remember.

Int. Why did Mr. Pickering leave your house?

Objected to as immaterial and irrelevant and as calling for opinion of witness.

Ans. The first I knew of his going away he came out into the garden and said he was going away; I asked him if he was mad at me; said he was not; asked him if any of my family had mistreated him; said they had not; said that Wm. Dawsonwas a perfect gentlemen; then I asked him what he was going away for; said he was going to leave until my children all got married off and then he was coming back to live with me; I told him if he had no excuse to go away he had none to come back; he did not go away for a few weeks after that; he came out to the kitchen one morning after that and said that if I did not drive my children off he would leave; I told him I would not drive my children off; told him when he went away he could not come back; he did come back and broke [the] lock off the door and came in early in the morning; he hitched up my team; then I told him to unhitch it, but he did not and left it standing hitched; he left then.

Cross-examination:

Int. Where do you live?

Ans. Factoryville, Cass Co., Neb.

Int. When did you come to Lincoln?

644 Ans. Tuesday morning last.

Int. Where have you stayed since then?

Ans. At Mr. Burr's.

Int. At L. C. Burr's and his family here in Lincoln?

Ans. Yes, sir.

Int. Has L. C. Burr been at home during the time you have stayed there?

Ans. He has been away most of the time.

Int. What time Tuesday did you come?

Ans. At 9½ in the evening.

Int. Was he at home when you come?

Ans. He came home that evening.

Int. Was he there Wednesday, the following day?

Ans. I believe not.
Int. Do you know?
Ans. No; he was not, I believe.
Int. Do you know where he went on Wednesday?
Ans. I think he went to Omaha.
Int. What time Wednesday?
Ans. Early in the morning.
Int. When did he come back?
Ans. Last evening.

It is stipulated between the parties conducting the examination herein that from this point the testimony of this or other witnesses may be taken in shorthand by C. L. Trevitt, and by him translated and written out by the examiner, and all to be done in the presence of said examiner.

Int. Are you certain that he went to Omaha Wednesday morning?
Ans. I suppose he did; I heard Mrs. Burr say he was going there.
Int. Did he return between the time he went to Omaha and last night?
Ans. No; not since I have been there, he has not been away.
645 Int. Did you come here to Lincoln to testify at his request?
Ans. Yes, sir.
Int. Did you see Mr. Burr the night of your arrival.
A. Yes, sir.
Int. Where?
Ans. At his house.
Int. Did you first see him at his house that evening?
Ans. No, sir.
Int. Where?
Ans. I saw him on the train first.
Int. At what point on the train did you first see him?
Ans. I believe it was Plattsmouth and Lincoln he came on the train.
Int. Did you talk with him on the train?
Ans. Not very much.
Int. Did you at all?
Ans. I spoke to him.
Int. Where did you get on the train?
Ans. I got on at Plattsmouth.
Int. You met him at the junction there?
Ans. He got on somewhere; I do not know where; he was not on when I got on, but a little while after.
Int. Did he sit with you on the same seat?
Ans. He did for a little while.
Int. Did you have word from him that he would meet you?
Ans. No.
Int. From what point did you receive the word to go from home to Lincoln?
Ans. They came over from Plattsmouth to where I live for me.
Int. Who came?
Ans. I do not know what his name was.

Int. How did they come?

646 Ans. In a buggy.

Int. In a buggy from Plattsmouth?

Ans. Yes, sir.

Int. Who sent the buggy?

Ans. Well, I do not know.

Int. Did the person say that came?

Ans. No.

Int. He did not say who sent the buggy; had you word to come before the buggy came for you?

Ans. No, sir.

Int. When you got on the train when did you first see Mr. Burr; at what point between there and Lincoln?

Ans. Well, I don't know what point it was.

Int. About where—how far from where you got on?

Ans. We had not been travelling but a little while; I do not remember the station.

Int. When he got on did he take a seat with you?

Ans. Not at first.

Int. Did he come and speak to you when he first got on?

Ans. I believe he did; he had not been on but a little——

Int. Then did he sit there with you?

Ans. Yes, a little while.

Int. How long?

Ans. I do not remember.

Int. About how long?

Ans. ——.

Int. About how long; did he not ride to Lincoln in your seat?

Ans. Part of the way.

Int. What part of the way? After he first got into the seat did he not continue in that seat until he got to Lincoln?

Ans. Well, I do not remember whether he rode all the way.

647 Int. You will not swear that he did not?

Ans. No.

Int. You are not certain he did remain in the seat?

Ans. No.

Int. Did he mention this case while he was in the seat?

Ans. Yes, he did mention it.

Int. When he first got in?

Ans. He had been in the seat awhile.

Int. What did he first say about it?

Ans. I do not remember what he did say to me about it.

Int. Now state what he first said about it.

Ans. I do not believe I remember what he said about it.

Int. Did he speak about it more than once?

Ans. I do not know as he did.

Int. Will you swear that he did not?

Ans. I do not know.

Int. Now state, as nearly as you can remember, what he first said about it, or any part of what he did say.

Objected to as not proper cross-examination, incompetent, immaterial, and irrelevant.

Ans. I think he said it was making me a heap of trouble, but he thought he would get through with the case after awhile.

Int. Anything else?

Ans. I can't think of anything more.

Int. Will you swear he did not say anything more?

Ans. Well, I can't think of anything more.

Int. Well, now, after that, while you were on the train after the first time, did he speak about it again?

Ans. I cannot think of anything more; I believe not.

Objected to because the witness says she cannot think of anything more and has answered the question, and as immaterial & irrelevant.

648 Int. Will you swear that he did not?

Objected to again because the witness has already been sworn by the examiner, and is under oath now, and that she has answered the question two or three times—immaterial and irrelevant, and is not cross-examination.

Ans. He did not, to my recollection, speak to me about it.

Int. Was it spoken of after you got to Mr. Burr's that night?

Ans I believe Mr. Burr and Mr. Wheeler were speaking something about it.

Int. Wheeler was there?

Ans. Yes, sir; but did not speak to me about it that night.

Int. They did not speak to you about it?

Ans. No, sir.

Int. Did not Burr on the train tell you that he wanted you as a witness in this case, and what he wanted to prove by you, while you were on the train?

Objected to for the reason that the records in this case show that United States deputy marshal had been to Plattsmouth to subpœna this witness as a witness in this case.

Ans. I do not remember that he did.

Int. I understand you distinctly to say that you do not remember that he did. (Burr objects to the understanding of counsel as being put into the record.) Will you swear that he did not?

Objected to as immaterial, incompetent, and irrelevant, and for the reason that it has been answered two or three times.

Ans. I do not remember if he did.

Int. Will you swear that neither Bur nor Wheeler spoke to you about this case at the house that night?

649 Ans. If they did I do not remember it.

Int. Did you meet Wheeler Wednesday?

Objected to as immaterial and irrelevant and not proper cross-examination.

Ans. I do not remember of meeting him on Wednesday.

Int. Did you meet him on Thursday?

Ans. I believe he came over one day with some word to Mrs. Burr and went right out again.

Int. Did you speak to him about the case?

Ans. No, sir.

Int. Did you meet Burr or Wheeler last night after Burr got back from Omaha?

Ans. Never saw him last night.

Int. You did not see Burr last night?

Ans. No.

Int. Or Wheeler?

Ans. No.

Int. Did you see Wheeler?

Ans. I do not think he was at Mr. Burr's yesterday.

Int. Answer my question; did you see him?

Ans. No, sir.

Int. Did you see Burr or Wheeler to-day before you came to court to testify?

Ans. No, sir; I did not see them together.

Int. Did you see Burr and talk with him at his house before you came here to testify?

Objected to as immaterial, incompetent, and irrelevant, and not cross-examination, and the question has been answered several times.

Ans. I saw him, but he did not say much about it this morning, only told me to get ready to come down.

Int. What time this morning did he first speak about it?

Ans. It was quite late, after breakfast.

Int. Where?

Ans. At home.

650 Int. State exactly what he said.

Objected to as immaterial, irrelevant, and incompetent, and has nothing to do with the case and not proper cross-examination. Mr. Burr also objects to the stump speeches of attorneys in this case, as they have nothing to do with the case, and Lamb knows it, and if he don't know it he ought to know it, and also advises the witness not to answer the question, but to decline to answer it.

Objection withdrawn and the following objection substituted: That no time or place is fixed for the witness to state anything that Burr told her; that it is a general sweeping drag-net without time or place or without asking the witness what was said.

Ans. I believe he said that he would have to get ready and come down here.

Int. Anything more?

Ans. I do not remember.

Int. Anything more before you were put on the stand to be sworn?

Ans. Nothing that I can think of.

Int. Will you swear that nothing more was said?

Objected to for the reason that the witness is under oath now and has been sworn by the examiner and is giving testimony upon her

oath, and counsel knows it, and if he don't know it he ought to know it, and that witness has already sworn that she has told all that was said to her that she can remember.

Ans. Nothing that I can remember of.

Int. Since you saw him this time did he tell you what Pickering had sworn to?

Objected to by Burr as immaterial, irrelevant, and not cross-examination.

651 Ans. I believe he did say something about it.

Int. When?

Ans. I do not remember just where it was.

Int. Where?

Ans. It was at his house; but I do not remember what it was he said to me—he said something about it.

Int. What?

Ans. He told me something that he said.

Int. What?

Ans. I do not remember what it was.

Int. Do you remember anything about it?

Ans. It was something that we had over to-day.

Int. Just like that which we had over to-day?

Ans. Something like it.

Int. Did he have a paper that he read from?

Ans. No, sir; I believe not.

Int. Did you see him have the paper that he read from to-day when he asked you questions?

Objected to as immaterial, irrelevant, and incompetent, and not proper cross-examination, and nothing to do with this case, and nothing to do with the will or property in controversy in this case, and counsel knows it, and if he don't know it he ought to know it.

Ans. No, sir; I did not see any paper to-day.

Int. Substantially the same questions that were read to you to-day here were those that he asked you at the house; were they?

Objected to, as witness has testified that no questions were asked her at the house; that counsel assumes something he knows to be false and untrue; that he tries to make the witness testify to something that is not true.

Ans. They were the same questions.

Int. Did he ask you any other questions at the house than those he asked you here to-day?

652 Ans. No, sir.

Int. None others?

Ans. No.

Int. Did he ask you at the house, as nearly as you can remember, all of these questions that he asked you here to-day?

Ans. No; not all of them.

Int. Can you remember which ones of the questions he asked you here to-day he asked of you at the house?

Ans. Why, I do not know as I can.
Int. Did he ask any of these questions on the train?
Ans. No, sir; I believe not.
Int. What did he say to you with regard to these questions he asked here to-day?
Ans. He just merely spoke about it.
Int. What did he speak about it; give all he said about it as nearly as you can remember?
Ans. I believe he said something about the way Pickering had testified.
Int. And in connection with that what did he say about him; did he say he wanted you to contradict his testimony?
Ans. He did not say he wanted me to contradict it.
Int. What did he say about that?
Ans. He just spoke about the way he testified.
Int. How old are you?
Ans. 55 years old.
Int. When did you come to Lincoln?
Ans. I came here last Tuesday.
Int. When did you first come to Lincoln.
Ans. I came to Lincoln about 17 or 18 years ago.
Int. Where in Lincoln did you first live?
Ans. I lived near where the post-office building is now.
Int. In the stone house?
653 Ans. Yes, sir; we lived there first.
Int. How long did you live in the stone house after your husband died?
Ans. He died the 22d of July, and I moved out the 1st of Dec., I believe it was.
Int. Of that year?
Ans. Yes.
Int. Where did you move to?
Ans. I moved out south of State House.
Int. In the white house out there?
Ans. Yes, sir; I built the house and went out there.
Int. How soon after your husband died did you begin the building of that house?
Ans. I think I commenced the first of November.
Int. Who did your business for you first after your husband died?
Ans. Mr. Galey.
Int. Mr. Galey until when?
Ans. Until Mr. Burr took the business.
Int. When was this?
Ans. I do not remember just when it was; Burr can tell that.
Int. What year?
Ans. I think it was 1873 or 1875.
Int. You lived in the white house there until that time—until Burr took charge of the business?
Ans. No, sir; I did not live in that house all the time.
Int. Where?
Ans. We built a house where Fitzgerald lives.

Int. In the stone house?
Ans. Yes, sir; part of the time.
Int. When did you build that?
Ans. I cannot remember just when it was.
Int. What year?
Ans. I think it was in 1872; I am not positive.
Int. What children lived with you in the stone house?
654 Ans. All of my children, except my oldest boy.
Int. What children lived with you in the white house?
Ans. All lived with me until the oldest son was married.
Int. In what year was he married?
Ans. I believe he was married in 1870.
Int. In 1870?
Ans. I believe he was.
Int. Where did he live after marriage?

Objected to as incompetent, immaterial, & irrelevant, and not proper cross-examination.

Ans. First, after he was married, he lived near where I lived.
Int. On the place up there?
Ans. He lived on some school land near there.
Int. How long did he live there?
Ans. I think he lived there about a year.
Int. Where after that did he live?
Ans. He went to Butler county.
Int. To Butler county?
Ans. Yes.
Int. Did he settle on a homestead up in Butler county, or was he in business there?
Ans. He was just on a farm.
Int. Stock-raising?
Ans. Yes, sir.
Int. You moved direct from the stone house to the new house you built; did not live in any other place?
Ans. No, sir.
Int. While in Lincoln did you live in any place other than the stone house and the white house and in the one called the Fitzgerald house?
Ans. No.
Int. Did you not have any other house or home that you lived in part of the time?
Ans. Not after Mr. Dawson died.
655 Int. Did not have any other house after Dawson died?
Ans. No, sir.
Int. You built the house yourself?
Ans. I built the white house.
Int. How long did you live in the white house?

Objected to as not proper cross-examination, immaterial, irrelevant, and incompetent, and ask the court to strike out the evidence, because counsel is going away beyond the limits of a fair cross-examination.

Ans. I lived there, I think, over two years.
Int. Then moved into the stone house?
Ans. Into the Fitzgerald house.
Int. In what year did you build the Fitzgerald house?

Objected to as incompetent, immaterial, and irrelevant, not proper cross-examination; that counsel is going beyond a fair and reasonable limit for cross-examination and ask the court to exclude the evidence.

Ans. I do not believe I remember what year it was.
Int. If your husband died in 1869, and if you built the white house in November, 1869, and if you lived in the white house two years when you moved into the Fitzgerald house, that would make it 1871, would it not?

Objected to as not proper cross-examination, and the court is asked to exclude the evidence, because the counsel insists upon going beyond a fair and reasonable examination of witness.

Ans. I won't be sure it was only two years we lived there.
Int. Is that the best of your present recollection?
Ans. Yes, sir.
Int. The Fitzgerald house was a brick house, was it not?
Ans. Yes, sir.

656 Objected to, as there is nothing in the direct examination said or testified about the Fitzgerald house, is not proper cross-examination, and counsel is going beyond a fair and reasonable limit to cross-examine the witness, and we ask the court to exclude the evidence.

Int. How long were you building the Fitzgerald house?

Objected to as not proper cross-examination, nothing said in direct examination or testified to about the Fitzgerald house, and counsel is going beyond a fair and reasonable limit to cross-examine the witness, and the court is asked to exclude the evidence.

Ans. I do not remember.
Int. When you moved out of the stone house how long did it stand vacant before you rented it?
Ans. In town?
Int. Yes; the stone house in town?
Ans. It was not vacant when I left; the family were in it when I left.
Int. To whom did you first rent it or any part of it?
Ans. The first we rented it?
Int. No; after the death of your husband and before you moved out of the white house?
Ans. Mr. Hyatt.
Int. W. J. Hyatt, the livery man?
Ans. Yes, and Mr. Clark.
Int. What room did you rent to Hyatt?
Ans. I rented the southwest room, upstairs.

Int. How large a room was that?
Ans. I do not know; it is a pretty good sized room.
Int. How large as near as you can state?
Ans. As large as this room, I should think; I am not sure. (The room referred to by witness and in which examination was at the time held is about 10 x 12 feet.–Ex.)
Int. About 10 x 12 feet square, do you think?
657 Ans. I do not know much about such things.
Int. Was it plastered?
Ans. Yes, sir; that room was plastered, I think.
Int. Will you swear it was?
Ans. I am pretty certain it was plastered and papered both. I am not sure but it had just been plastered.
Int. For how long a time did you rent it to him?
Ans. I do not remember.
Int. Was it as much as a month?
Ans. I think longer.
Int. Will you swear that he was in it as much as a month?
Ans. Yes, sir.
Int. How many months will you swear that he was in there?
Ans. I would not be willing to swear that it was over two months.
Int. What room did Mr. Clark have?
Ans. Mr. Clark had the northwest room.
Int. How large was that?
Ans. About the same size as the other.
Int. About the same size?
Ans. I should think it was.
Int. Will you swear how long you rented that room to Mr. Clark?
Ans. I do not remember how long Clark had it.
Int. Will you swear he had it as much as a month?
Ans. I think he had it three weeks or a month.
Int. What Clark is that; was it Jno. R. Clark?
Ans. No, sir; a stranger to us; he has gone west.
Int. What other rooms?
Ans. The northeast room I rented to Dr. Robbins.
Int. How large a room was that?
Ans. Quite a large room; I do not remember.
658 Int. About the same size of the other?
Ans. It was not a square room.
Int. Long narrow room?
Ans. Not very narrow; it was a good sized room.
Int. For how long a time did you rent that room to Dr. Robbins?
Ans. I do not remember.
Int. Will you swear that he had it as much as a month?
Ans. I don't remember now.
Int. Is it not a fact he only had it a week?
Ans. He had it longer than a week.
Int. Will you swear he had it a month?
Ans. I think I can safely say he had it a month or more.
Int. Who else had a room there?
Ans. Mrs. Russell had a room in the basement.

Int. How long?

Ans. I think she had the room about four or five months.

Int. Four or five months, you think?

Ans. Yes, sir.

Int. Nobody else?

Ans. Mr. Shaberg lived in the house awhile; he did not stay very long.

Int. Were those rooms plastered?

Ans. No; I think not downstairs.

Int. Not plastered downstairs?

Ans. No; I think not.

Int. Were there any rooms plastered except those occupied by Hyatt?

Ans. The rooms upstairs were plastered.

Int. These rooms upstairs were the next rooms above the basement, were they not?

Ans. Yes, sir.

Int. The house consisted then of the basement and these rooms that you speak of?

659 Ans. Consisted of nine rooms.

Int. How many in the basement?

Ans. Four in the basement, five upstairs, and a cellar besides.

Int. What part did you occupy?

Ans. I occupied a bed-room upstairs and some rooms downstairs.

Int. Who was your agent during that time; had you then employed Galey?

Ans. I think not; we collected our own rents, I know.

Int. Had you employed Galey before you moved to the white house?

Ans. Yes, sir; I believe we did.

Int. He had begun selling your property before you moved there, had he not?

Ans. I do not remember whether we had any lots laid out before we moved there or not.

Int. Did he or Burr attend to the laying off of the lots?

Ans. Mr. Galey attended to that.

Int. Galey attended to that?

Ans. Yes, sir.

Int. Had any of the children moved away before Galey sold any of the lots, do you know?

Objected to as not cross-examination; that nothing was said about Galey or the selling of lots in the direct examination; and the witness should be made a witness for them if they wish to prove such matters; and we ask the court to exclude the evidence as not proper cross-examination, and as immaterial and irrelevant.

Ans. I think not.

Int. Who platted the property for you?

Ans. Mr. Galey.

Int. You may state what children were at home at the time you discharged Galey and employed Burr if you can.

Giles objects to the question for the reason that it is
660 not proper cross-examination; that the record here shows by the revocation of Galey's power of attorney that he ceased to do the business of Mrs. Dawson about the year 1875; they are now calling on the cross-examination for evidence that should be put in in chief by them as their witness; is not cross-examination in this case, and we ask the court to exclude the evidence; also that it is immaterial and irrelevant.

Ans. They were all at home except the oldest boy.
Int. Who succeeded Mr. Galey?

Objected to that no foundation is laid for this examination; nothing was asked in chief of this witness about Galey or who succeeded him; that it is improper cross-examination, and we ask the court to exclude it from the records; and if the parties wish to make Mrs. Dawson their witness they have a right to do so.

Ans. Mr. McKay, I think.
Int. Who succeeded Mr. McKay?
Ans. I do not know.
Int. I mean who succeeded Mr. Galey as your agent; who was you agent after Galey?

Objected to, and we call upon the court to exclude this evidence; that nothing was said in the examination-in-chief as to who was her agent; that it is improper cross-examination; that these parties should make this lady their witness if they wish to prove matters of this kind.

Ans. Mr. Burr.
Int. L. C. Burr?
Ans. Yes.
Int. What property did Mr. Galey sell for you; can you now tell?
Ans. He sold Capital addition.

(Same objection as last above.)

Int. What property did Burr sell as your agent?

661 Objected to as not proper cross-examination, nothing being asked in the direct examination touching this point; that if the counsel here wish to call for such testimony they may make Mrs. Dawson their witness, and we ask the court to exclude it for that reason; and it is not the best evidence—calls for hearsay and secondary evidence.

Ans. Part of South Lincoln.
Int. Dawson's addition to South Lincoln, do you mean?
Ans. Yes, sir.
Int. During what time did L. C. Burr act as your agent?

Objected to because nothing was asked in examination-in-chief what time or whether L. C. Burr acted at all; nothing was said of it whatever; that it is improper cross-examination; that the witness should be made a witness on the other side, and we ask the court to exclude the evidence.

Ans. I do not know just when it was.
Int. When did you leave Lincoln this last time—move away?
Ans. In 1879.
Int. In 1879?
Ans. Yes, sir.
Int. With whom did you leave your unfinished business when you went away?

Objected to again as not proper cross-examination; nothing was said in the examination-in-chief by this witness who she left her business with when she left Lincoln; that it is improper cross-examination, and we ask the court to exclude it for that reason; that it is wholly immaterial, incompetent, and nothing to do with the case.

Ans. Mr. Burr.
Int. L. C. Burr?
Ans. Yes, sir.
Int. State when, if ever, you discharged Mr. Burr, or did you ever discharge him?

662 Objected to as not cross-examination; nothing was said in the direct examination or asked of her when she discharged Burr or had anything to do with him; that it is improper examination and we ask the court to exclude any answer that may be given.

Ans. I never discharged him.
Int. Where did Burr live during the time you lived in Lincoln, and down to now so far as you know?

Objected to for same reason as in last above.

Ans. He lived down toward the Baptist church.
Int. Lived here in Lincoln?
Ans. Yes, sir; that is all I know.
Int. Where did Mr. Pickering live at the time your husband died?
Ans. I do not know where he lived.
Int. Where did he live during the time that you lived in the white house?
Ans. I suppose he lived in Ohio.
Int. Where in Ohio?
Ans. Brown county, I believe.
Int. What place in Brown county?
Ans. I do not know exactly, but I believe it was near New Hope.
Int. Where did he live during the time that you resided in the Fitzgerald house?
Ans. I do not know as I know.
Int. Do you know where he lived any part of that time?
Ans. No, sir.
Int. He did not live in Lincoln; did he?
Ans. No, sir; I do not think he did.
Int. Did you receive letters from him mailed at New Hope?
Ans. Yes, sir.

Int. Have you those letters?

663 Ans. *Yes*, sir.

Int. Are they destroyed?

Ans. I do not know anything about them; I do not believe there are any about the house.

Int. Where did he live in 1880?

Ans. He lived in Cass county.

Int. Cass county, this State?

Ans. Yes, sir.

Int. Did you write to him at New Hope at the time he lived there?

Ans. Yes, sir.

Int. Do you know what time he left New Hope?

Ans. No, sir.

Int. Did you hear from him from the time that he wrote you from New Hope prior to 1879 by letter?

Ans. Yes, sir.

Int. When; in what year?

Ans. I do not know; I do not remember.

Int. As near as you can and where were you living when you heard?

Ans. In Lincoln.

Int. Where after leaving New Hope did you next hear from him?

Ans. I was at home at Lincoln, I believe.

Int. Did you ever have any other correspondence with him at any other point than New Hope?

Ans. I believe he did write to me on his way out here.

Int. What year was that in?

Ans. I do not remember.

Int. Where were you living at the time you received that letter?

Ans. Living at the white house.

Int. Still in the white house?

Ans. Yes, sir.

664 Int. How long between the time you received the last letter and the time you saw him in Lincoln?

Ans. I do not remember how long.

Int. When did you first see him in Lincoln?

Ans. I do not believe I remember.

Int. Do you believe you know where you were living at the time you saw him in Lincoln?

Ans. Living in the white house.

Int. How long was he here?

Ans. A day or two, I believe.

Int. Where did he go when he left?

Ans. Indeed I don't know; I suppose he went back to Ohio.

Int. Did you hear from him after he went back?

Ans. I heard from him on the road back.

Int. How long after he went back that time was it until you heard from him again?

Ans. I do not remember how long it was.

Int. How did you next hear; by letter?

Ans. Yes, sir.
Int. From what point?
Ans. I do not remember what point.
Int. In Ohio?
Ans. I do not remember whether it was from Ohio or not.
Int. Did you get more than one letter?
Ans. I do not remember whether I did or not.
Int. You remember you got at least one?
Ans. Yes, sir.
Int. Did you answer it—did you write to him?
Ans. I did not answer the one on the road.
Int. Did you write him a letter after the one you got from him on the road?
Ans. Yes, sir.
665 Int. Did you write to him after you got the one a long time after that from Ohio?
Ans. I do not remember how long it was.
Int. Where were you living at the time the correspondence was resumed?
Ans. Living at the white house.
Int. Still living at the white house?
Ans. Yes, sir.
Int. Did you hear from him by letter while you were living in the stone house?
Ans. I do not remember; I think not.
Int. You think not; is that your testimony?
Ans. Yes, sir.
Int. You say you left the white house in 1871, or about that time, & that you heard from Pickering while you lived in the white house; now did you receive any letter after that time, after 1871, from Pickering when you first moved out of the white house?

Objected to as assuming she received a letter from him in 1871; she has not so testified.

Ans. I did not receive any letters from him until I moved back into the white house.
Int. Then I understand you distinctly that between the time you first moved out of the white house & the time you moved back into the white house you did not get any letters from Pickering; is that correct?

Objected to—to counsel stating what his understanding is of the testimony of the witness.

Ans. Not to my recollection; I did not get any until I went back into the white house.
Int. After you moved back into the white house from what point were his letters written?

666 Objected to, as witness has already testified that she only received letters after she moved back into the white house; that she did not receive any before that and has already answered

the question that she received them from Brown county, Ohio; we object to the repetition of the evidence.

Ans. New Hope, Ohio.

Int. Now, did you get any letters from Pickering while you yet lived in the old stone house?

Ans. No, sir.

Int. Did you write him any letters while you were in the stone house?

Ans. No, sir.

Int. How long after was it that you moved into the old stone house that you got the first letter?

Ans. I do not remember.

Int. Was it as much as a month?

Ans. I do not remember.

Int. Will you swear that you did not get one from him more than a month from the time you moved from the old stone house up into the white house?

Ans. Yes, sir; it was more than a month.

Int. Will you swear it was more than a year?

Ans. I think it was more than a year.

Int. Will you swear that it was more than two years after you moved from the old stone house into the white house?

Ans. I think it was.

Int. How long will you swear it was?

Ans. I would not like to be certain.

Int. Fix the time as nearly as you can remember.

Ans. I cannot remember.

Int. Can you give any idea?

Ans. It might be a year & six months, but I cannot state
667 exactly.

Int. Did you hear from him while in the white house, after you moved from the stone house into the white house, and before you moved into the Fitzgerald house.

Ans. I never heard from him until I came back into the white house?

Int. What year was that in; do you remember?

Ans. I do not remember.

Int. And you will swear that you had no correspondence from him, after your husband's death, until you moved out of the Fitzgerald house back into the white house, will you?

Ans. I have not had any to my recollection.

Int. How long did you live in the Fitzgerald house?

Ans. I do not remember whether it was two years or not.

Int. At the time you saw Pickering, here in Lincoln, was it at the time you were living in the white house or after you moved back into it?

Ans. After I moved back into it.

Int. Now did you have any correspondence with him after he was here and you had moved back into the white house from the Fitzgerald house?

Ans. After I moved back into the white house.
Int. And after he was here?
Ans. I had correspondence with him after I moved back into the white house.
Int. Did you have correspondence with him both before and after he was here?
Ans. Yes, sir.
Int. During how many years did the whole of this correspondence extend—about how many as near as you can remember?
Ans. I cannot tell.

668 Burr objects because witness has said several times that she could not tell the time or remember the various dates and times of the correspondence of her private affairs, but she has given the same as near as she could, so that a blind man could see it, and that further examination on this point ought to cease.

Int. In what year did you finally move out of the white house?
WITNESS asks: To move into the Fitzgerald house?
Int. No, to move away?
By BURR: When you went to Cass county?
Ans. In 1879.
Int. What time of the year?
Ans. About 1st of November, as near as I can remember.
Int. How long before you moved away from the white house, finally, was it that you saw Pickering the last time?
WITNESS asks: The last time?
LAMB asks: ——
Int. Yes.
Ans. After I went away from the white house.
Int. Now, how long was it before you left the white house for the last time that you saw Pickering?
Ans. I do not remember.
Int. Fix the time as near as you can.
Ans. About a month or two; I am not sure.
Int. How soon after you went to Cass county did you see him?
Ans. I saw him very shortly after I went down there.
Int. How soon, as near as you can fix the time?
Ans. About a week or ten days.
Int. Did you have any correspondence with him at Cass county before he came there?
Ans. Yes, sir.
Int. To what point did you write to him?
Ans. Union Mills.
Int. What county?
Ans. Cass county.

669 Int. How long had he been at Union Mills when you moved from the white house to Cass county?

Objected to because the question assumes that this lady knew where people lived when she was residing here, in Lancaster county, & how long they had lived somewhere else.

Ans. I do not know as I remember.
Int. Did you write to him from Lincoln to Union Mills?
Ans. Yes, sir.
Int. For how long a time had that correspondence been continued?
Ans. I do not remember.
Int. Had it been as much as a year?
Ans. I think not.
Int. Had it been as much as a half a year that you had correspondence with him at Union Mills before you went to Cass county?
Ans. Nine or ten months I should say.
Int. Did he visit you from Union Mills, Cass county, here during that nine or ten months?
Ans. Yes.
Int. How frequently?
Ans. Twice, I think.
Int. What time of the year did he come here from Union Mills?
Ans. Some time in the summer; I do not remember just when.
Int. The first time in the summer or the 2nd time in the summer?
Ans. Both times in the summer.
Int. How far apart were these two several visits?
Ans. I do not remember.
Int. State as near as you can.
Ans. I do not believe I can remember.
670 Int. Have you no recollection upon that point?
WITNESS asks: Do you mean between the visits?
LAMB: Int. Yes.
Ans. I do not remember.
Int. How did he come up from Union Mills; do you remember that?

Objected to as incompetent, immaterial, and irrelevant. It makes no difference whether he came afoot or on horseback.

Ans. He came on horseback.
Int. After you went down to Cass county did you write to Pickering at Union Mills?
Ans. No, sir.
Int. How soon after you went to Union Mills did you see Pickering?
Ans. About a week, I think; ten days or a week.
Int. What part of your family did you take with you from here to Union Mills?
Ans. I took all of them except my married son, Albert, & my daughter Evaline.
Int. How long had your son been out West when you went to Factoryville?
Ans. I think he went out in May.
Int. The May of the same year?
Ans. Yes, sir; I believe so.
Int. Where had Albert been previous to the time he went West?

Objected to as not cross-examination, immaterial, & irrelevant,

nothing said about it in the direct examination, and we ask the court to exclude the evidence for that reason.

Ans. At home.

671 Int. The first time that he left home he went West, did he?

Ans. He might have been away a little while before he went West. He never went away from home any distance until that time.

Int. How long had Evaline been away from home when you went to Factoryville?

Ans. One week, I think.

Int. One week?

Ans. One or two weeks; I do not remember; she was boarding away when I left.

Int. Now, you may state whether or not the members of the family that you took from here to Factoryville remained with you there at that place.

Objected to [as] not cross-examination, immaterial, & irrelevant.

Ans. My married son and his wife and my two little girls lived with me.

Int. Had you ever been to Factoryville before the time you moved there with your family?

Ans. I went down to see my farm.

Int. How long before you moved down there?

Ans. I do not remember just how long.

Int. State as near as you can.

Ans. I do not know whether it was over a month or not.

Int. Did you see Pickering at Factoryville at the time you went to see the farm?

Ans. I saw him.

Int. Who went down from here with you at the time you went to see the farm?

Ans. My son William.

Int. How long were you gone?

Ans. About two days.

Int. Was there any time after you first employed Mr. Burr

672 to do your business down to the present time that you ever discharged him?

Objected [to] as not cross-examination, immaterial & irrelevant, and nothing said in direct examination about this witness' attorney or the employment of Burr.

Ans. No, sir.

Int. Now state when you first learned that if you were married the children would get this property.

Objected to as not proper cross-examination and asking for a fact that she found out some way indefinitely, and assumes that she has learned at some time, and that it is for the courts to consider and not for the witness to say whether they get anything from the property, and it not being cross-examination the court is asked to exclude

it from the evidence; objected to also because it assumes that the children would get the property if she married, and it is claimed by the attorneys, Mr. Lamb, Harwood & Ames, Marquette & Deweese, Galey & Abbott, Lambertson & Billingsley, & Hall Reavis, and Joe Brown, all of them counsel for complainants, that the children never could have the property no matter if she did not marry again.

Ans. I heard it in 1880, when it was published in the Lincoln State Journal that the property was coming to the children.

Int. Is that the first that you heard anything about it?

Same objection as last above, and that 17 attorneys all claim that the children cannot have the property if she did get married, also objected to because the witness in the last question testified that she did not hear it until she saw it in the papers in 1880, and that she has answered the question.

Ans. Yes, sir.

Int. Down to that time had you any suspicion that you did
673 not own the property that you had sold?

Giles objects to this inquiry that it has nothing to do with this case, and it is only to satisfy the morbid curiosity of counsel that the question is asked, and we request the lady to decline to answer the question. I make this request because Walter J. Lamb, counsel now examining her, has given warranty deeds to South Lincoln property, and is simply inquiring of her in this action that he may bring an action against her.

By LAMB: I do not own any property in South Lincoln.

By BURR: He does, and has given warranty deeds, and is quizzing her for information that will aid him in future lawsuits.

WITNESS: I decline to answer.

LAMB: We insist upon an answer.

Burr requests again for the 2nd time that the lady do not answer the question and decline to answer the same.

Int. Now you may state, Mrs. Pickering, whether you remember the time you deeded the property to Mr. Shaberg.

Ans. I do not.

Int. Do you remember you deeded some property to Shaberg?

Ans. It seems to me I did, but I do not remember whether I did or not.

Int. Who made out the deeds that you had when the property was sold after you employed Burr as your agent?

Objected to, because the question is indefinite as to time and place, and the parties not being mentioned nor the property, and not cross-examination, and that no such question was asked on direct examination, and we ask the court to exclude the evidence for that reason, and also it assumes that Burr was her agent and had been.

674 Ans. Mr. Burr, I suppose.

Int. Did you ever have any conversation with Burr, during the time that he was your agent, with regard to your title to this property under the will?

Ans. No, sir.

Int. At any time?

Ans. No, sir; not to my recollection.

Int. Did he ever state to you at any time while he was doing business as your agent that you had better give quit-claim deeds to this property?

Ans. I do not remember.

Objected to [as] incompetent, immaterial, and irrelevant, and not proper cross-examination, and ask that the court exclude the evidence for that reason.

Int. Will you swear that he did not tell you that you had better make merely quit-claim deeds?

Ans. I do not remember that he said anything about it.

Int. Do you now remember any talk that occurred with regard to the title of this property at the time of the sale to Shaberg between you and Burr?

Ans. No, sir; I do not remember.

Burr objects because not cross-examination and counsel knows it, but insists and persists in unlawfully examining this witness against the well-known rules that he knows governs the production of testimony.

Int. Do you remember whether or not you made quit-claim deeds or warranty deeds to this property which you sold, or whether you made both kinds?

Ans. objected to because the question is indefinite in stating the date of any deed and parties to any of the deeds and description to any of the property; that whether the deed was or might have been a quit-claim deed or warranty, and that it is unfair, not proper cross-examination, and the court should exclude this kind of
675 evidence for that reason.

Ans. I do not remember.

Int. When did you first learn that there was any question with regard to the extent of your title in this property?

Objected to as not proper cross-examination, nothing having been said about this in the direct examination, incompetent, & irrelevant, and we ask the court to exclude the evidence.

BURR: I now ask the examiner to pass upon my objections and exclude the evidence.

EXAMINER: Which the examiner declines to do, and declines to exclude the evidence.

BURR: The request is withdrawn.

Ans. I do not remember.

Int. Do you remember whether the question was raised before you were married?

Ans. I do not remember of hearing it.

Int. Do you remember that Burr said to you at some time that you had better make only quit-claim deeds?

Ans. No; I do not.

Int. Do you remember that you merely made quit-claim deeds along toward the latter part, when you were married?

Ans. No, sir.

Int. Do you remember what kind of deeds you did make?

Ans. No; I do not remember.

Int. Do you remember that you made or signed any papers or deeds that Burr drew up for you to sign?

Ans. Deeds to sell property?

Int. Deeds; yes.

Ans. I signed deeds.

Int. As to the kind of deeds that were made, you left that to Burr, did you?

Ans. I do not remember what kind of deeds.

676 Int. Did you allow Burr to draw up any kind of deeds he had a mind to and you sign them?

Ans. No.

Int. Did you read the deeds and tell him what kind to make?

BURR: We object as not cross-examination, as no deed of any kind has been shown or produced to the witness or any dates stated of any deeds or any parties to any deeds or the description of any property, but she is asked to state the contents of certain deeds, which is impossible, and we ask the court to exclude the evidence.

Ans. I do not know.

Int. Did you leave it to him as to what kind of deeds should be made?

Objected to, witness having already answered the question that she did not know.

Ans. I did not.

Int. You are sure of that, are you?

Ans. Yes, sir.

Int. Then when he made a quit-claim deed you told him to make a quit-claim deed, did you?

Objected to [as] not cross-examination, nothing has been said whatever about quit-claim deeds on direct examination, incompetent, & irrelevant, and we ask the court to exclude the evidence.

Ans. No, sir; I did not tell him to make a quit-claim deed.

Int. Did you tell him to make a warranty deed?

Ans. No, sir.

Int. You did not tell him, then, what kind of deed to make?

Ans. I do not remember what I did tell him.

Int. Did you tell him?

Ans. I do not remember.

Int. Do you remember whether you ever did tell him at any time what kind of a deed to make?

677 Ans. No, sir; I do not remember that I did.

Int. Did you know the difference between the one kind of a deed and the other, or did you leave that to him?

Burr instructs the witness to decline to answer.

WITNESS: I decline to answer.

Lamb asks the examiner to rule on the propriety of the witness answering.

EXAMINER: I have already declined to rule on questions relating to testimony, but, to save time, I advise the witness to answer all questions which she can as promptly as posible, and direct the attorneys to proceed with the examination.

Int. Do you know whether or not you made different kinds of deeds—sometimes warranty deeds and sometimes quit-claim deeds—to the property sold by Burr for you?

Objected to [as] not proper cross-examination; nothing in the direct examination justifies this cross-examination; the court is asked to exclude the evidence.

Ans. I do not remember.

Int. You remember nothing of that kind then?

(Last objection renewed.)

Ans. No, sir; I do not remember.

Int. What was the last property sold by you, or by Burr for you, before your marriage? Do you remember that?

Ans. Yes, sir.

Int. What was it?

Ans. It was a row of houses in Lincoln that I had.

Int. Do you remember the last property of your husband's estate that you sold?

Objected [to] as not proper cross-examination justifying this cross-examination, and we ask the court to exclude the evidence for that reason.

678 Ans. I do not remember just what it was or where it was.

Int. Was that sold while you were here, or while you were away?

WITNESS: Which?

Int. The last of your husband's estate?

Ans. I believe it was while I was away.

Int. Was there none sold by Burr while you were down in Cass county?

Objected to as calling for contents of a deed, and not the best evidence, not producing the deeds that the witness may see them and know the dates, time, and property, not cross-examination, and the court is asked to strike out the evidence.

Ans. I do not remember; there might have been some lots sold; I do not remember.

Int. When did Burr first speak to you with regard to the extent of your title to this property under the will?

Objected to that witness has heretofore answered question, that it is not cross-examination, and we ask the court to exclude and strike out the evidence.

Ans. I do not think he said any thing about it; I do not remember of him saying anything about it.

Int. Never down until now?

Ans. I do not remember.

Int. Never down until now?

Ans. No, sir.

Int. When did Mr. Wheeler first speak to you about the extent of the title of your property?

Ans. He never said anything to me about it.

Int. Have you never conversed with Burr with regard to the extent of your title in this property down to now?

Ans. No, sir.

Int. Never at any time?

Ans. No, sir.

679 Int. Never been mentioned?

Ans. No.

Int. When did Albert ever mention anything to you with regard to the extent of your title to this property?

Objected to as not cross-examination, nothing — drawn out by anything in the direct examination that Albert Dawson ever mentioned to her anything about the title to the property, and we ask the court to exclude and strike out this evidence.

Ans. He never said anything to me about it.

Int. Never in any way mentioned it to you?

WITNESS: Do you mean before I was married?

Int. At any time.

Ans. No, sir; he never said anything to me about it.

Int. When did William first speak to you with regard to the extent of your right, title, or interest in this property, if ever at any time?

Objected to as not cross-examination, that counsel did not examine this lady on the direct examination upon this point, and if the other side wish to make this witness their own witness that they can lawfully ask such questions, & the court is asked to exclude and reject this testimony.

Ans. I do not remember of his ever speaking to me about it.

Int. Never at any time mention it to you?

Ans. No, sir; not that I remember of.

Int. When did Burr first speak to you with regard to the interest of the children in this property?

Objected to for [the] reason that counsel is going beyond a fair limit of cross-examination, that they have refused to bring this witness here to make her a witness for them, and they cannot ask her these questions on cross-examination, and we ask the court to strike out the evidence.

680 Ans. He never spoke to me about it before I was married.

Int. Will you answer my question and not something that I did not ask.

(Last objection renewed.)

Ans. Well, I do not remember when it was that he first spoke about it.

Int. When did Mr. Wheeler first speak to you about the interest of the heirs in this property, if at any time?

Ans. I do not think Mr. Wheeler spoke to me at all about it. I do not remember now.

Int. Where, during the time that you lived here, did Mr. Burr keep his office while he was your agent and managing this property?

Burr objects that there was nothing in the direct examination about where my office was either directly or indirectly; the counsel has gone beyond a fair limit of cross-examination; they have refused for months to bring this person as their witness in this case, and we ask the court to exclude the evidence.

Ans. I do not know as I can tell just where it was; it was in Lincoln some place.

Int. The business that you did with him you did at his office, or did he come to the house to do it?

Ans. Part of it was at his office and part at the house.

Int. Mrs. Pickering, when did you first speak with your daughter Evaline with regard to your interest in this property?

Objected to [as] not cross-examination.

Ans. I do not remember of speaking to her about it.

Int. Never?

Ans. No, sir.

Int. Will you swear that you never did?

Ans. Yes, sir.

681 Int. When did you first speak to your son Albert with regard to this property?

Ans. I did not speak to my son Albert about it.

Objected to as not cross-examination and ask the court to exclude the same.

Int. Never at any time?

(Same objection as last above.)

Ans. No, sir; I never spoke to him about it.

Int. Did you ever speak to your son William with regard to this property and the children's interest in it?

Objected to as not cross-examination.

Ans. I do not remember of it.

Int. Will you swear that you never did?

Ans. What do you mean by "When I spoke to him?"

Int. Did you ever speak to him about the children's interest in this property?

Ans. I do not remember of speaking to him about.

Int. Will you swear that you never have?

Objected to, as the witness has answered that she could not remember of speaking to him about it, & not cross-examination.

Ans. I might have said something to him about it.
Int. Did you to William?
Ans. I believe there was some conversation about it.
Int. Where?
Ans. I do not remember.
Int. Will you swear that you don't remember that at no place you ever talked to him about it at any time?

Objected to that the lady has answered fairly and is not proper cross-examination, and ask the court to exclude the evidence.

Ans. I do not know but that we talked something about it, but do not remember what it was.
682 Int. Befrre or after you went to Cass county, or both?
Ans. Not before, I am sure.
Int. Did you after?
Ans. I might have said something about it after I was married.
Int. Did you—not what you might have done?
Ans. Something was said about it, I believe.
Int. How soon after you went down there?
Ans. I do not remember just how soon it was.
Int. Fix the date as nearly as you can?
Ans. I think it was in the spring.
Int. What year?
Ans. 1880, I think.
Int. Was that the first time?
Ans. First time I remember.
Int. State just what was said by you and just what was said by him.

Objected to as not cross-examination, and ask court to exclude same for the reason that it is incompetent, immaterial, & irrelevant.

Ans. I told him I did not think he could get any of the property back. He said he did not know.
Int. Anything else?
Ans. I do not remember anything else.
Int. Remember anything else besides that that was ever said between you with regard to the property?

Objected to [as] not a proper cross-examination, and ask to have the court exclude it for that reason.

Ans. I did not pay much attention to it. I do not remember what was said.
Int. I repeat my last question. Do you remember anything else that was ever said between you with regard to this property?

Objected to, as the witness has answered the question and that it is not cross-examination.

LAMB: Answer the question.

683 Ans. No, sir; I do not remember now.
Int. What you have testified to then comprises all that you

are able to remember that was ever said between you and William with regard to the children's interest in this property; does it?

(Same objection as last above.)

Ans. Unless I could remember something more.

Int. Try and see if you can. Can you recollect anything further?

BURR: We object that she has not had time to think.

LAMB: Last question withdrawn.

Int. Take time to think deliberately, and try to remember if you have sworn to all that was ever said between you and your son William with regard to your children's interest in this property.

BURR: I object to any adjournment or continuance of this examination; that the witness has already notified the counsel that she must go home Monday morning.

Burr asks that the examination proceed, and that a question be asked the witness that she has not answered two or three times; that witness has answered the last question 3 or 4 times.

LAMB: Reporter will note all that Burr says.

BURR: I want every word Lamb utters to be taken down.

LAMB: Read the question.

BURR: I object that the question has been read and answered 3 different times by her 3 last several answers.

EXAMINER (After a pause of ten minutes): Mrs. Dawson, do you think of anything else?

BURR: Put it down; I want every word that Dales says.

684 We object to Dales' question, as not cross-examination & as improper cross-examination, and that she has answered the question.

Int. Now that you are given time to think can you recollect of anything further other than you have already testified to that you have ever said with regard to the interest in this property and the interest of the children in it?

BURR: I object because it assumes a conversation, and no time and place given for such conversation, and nothing said about same on the examination-in-chief.

Ans. I believe I heard him speak something about his children. I think he said that he wanted to educate them, if he ever got any property.

Int. Was that in the same conversation that you testified about before, or was it at a different time?

Ans. I think it was at a different time.

Int. About when was that?

Ans. I think it was a little before he died; a short time before he died, I think.

Int. Have you now given all that you can recollect that was said between William and you touching this property at any time?

Ans. I never paid much attention to it, and I cannot remember.

I did not ask you what attention you had given to it, or how well

you can remember it. I asked you if there is anything further that you can recollect that was said between you other than what you have already testified to.

Objected to as not cross-examination.

By BURR: I wish you would answer, if you know of any conversation at all. My great desire is to have them get all they can. (To the witness.)

LAMB: I see you are very desirous of it.

685 BURR: You think because Reavis has given you a list of questions to ask this woman you will try to get all you can out of her (to Lamb).

LAMB: Reavis has just filled me full.

BURR: I know what he has done; I know all about it.

Int. Now, that you have taken time to think, can you add anything further by answering my question?

BURR: Now that I have had time to think I renew my same objection.

Ans. I believe I heard him say something about it, but it never amounted to anything.

Int. Did you ever see L. C. Burr in Cass county?

Objected to as not proper cross-examination, no such question was asked in direct examination, and the court is asked to exclude the evidence for that reason.

Ans. Yes, sir.

Int. When first?

Objected to as not cross-examination.

Ans. A year or two ago, I think.

Int. A year or two ago? How did he come down?

Ans. I do not remember whether he came down on the train or whether by buggy.

Int. Was William there at the time he was there?

Ans. William was dead.

Int. Where in Cass county did you see him?

Ans. Saw him at our house.

Int. How long did he stay?

Ans. Stayed over night.

Int. Did you ever speak with Pickering about this property?

Ans Which property?

Int. The property that came under the will?

Objected to as all of [the] property under the will — not in controversy here.

Ans. I do not think I did. I talked to him about my own

686 property.

Int. Was Pickering there at the time Burr came down?

Objected to as not cross-examination.

Ans. No, sir.

Int. Where was he?
Ans. He had gone away then.
Int. How long was that before he had gone away?
Ans. Mr. Burr was there, I think, in May.
Int. What year?
Ans. 1881, I think it was; I am pretty sure it was in 1881.
Int. When did Pickering go away?
Ans. He went away in October.
Int. What year?
Ans. In 1880, I think.
Int. How many times has Burr been down there?

Objected to as not cross-examination.

Ans. Let me see; two or three times, I think.
Int. Two or three times?
Ans. I think so.
Int. Anybody come with him that you know of?
Ans. Mrs. Burr once.
Int. Which time; the first, 2nd or 3rd time?
Ans. I think she came twice.
Int. Which two times did she come; the first and 2nd, or the 1st and 3rd, or the 2nd and 3rd?
Ans. The first and 2nd time, I think; I am not sure.
Int. After you went down on to the farm in Cass county, when was the first time you came back to Lincoln after that?
Ans. I went back in June, I think.
Int. June of what year?
Ans. 1881, I think.
Int. Did Mr. Pickering come up with you at that time?
Ans. No, sir.
Int. Did you call at Burr's office when you came up in June, 1881?
687 Ans. No, sir.
Int. Did you see Burr?
Ans. Yes, sir.
Int. Where?
Ans. Let me see—I saw him at his house.
Int. Did you then stop at his house?
Ans. For a short time.
Int. What — of your family were at home the first time you visited Cass county?
Ans. I think all of my family were there.
Int. What was the date of your marriage?
Ans. 14th of November, I think.
Int. Of what year?
Ans. 1879.
Int. What was the date of your license?

Objected to, as the license is the best evidence.

Ans. Maybe I am mistaken; maybe it was the 14th of December.
Int. What was the date of your license?

Ans. I think it was the 14th day of November or the 14th of December; I can't recollect which it was.

Int. Was it December or November?

BURR: It was in December.

Int. In what county was the license obtained?

Objected to, that the license is here in evidence; not cross-examination. The license should be produced to let the lady see it that she may look at its date, and we ask the court to exclude the evidence.

Ans. In Cass county, city of Plattsmouth.

Int. Was there any engagement by letter between you and Pickering; any correspondence between you and him while he was in Cass county?

Objected, as the letters are the best evidence and no notice has been served to produce any letters and no foundation has
688 been laid for the question and not cross-examination. We ask the court to exclude the evidence.

Ans. There was no engagement through letter that I remember of.

Int. Have you any of those letters now?

Ans. I do not know whether I have or not; I think not.

Int. Have you any of the letters you wrote to him?

Ans. No, sir.

Int. Did he ever return you any of them?

Ans. Not that I remember of.

Int. Did you ever request him to return any of them?

Ans. No, sir.

Int. Was there any verbal engagement between you and him while you yet lived here when he came up from Cass county on a horse?

Ans. Yes, sir; we were engaged.

Int. Was that the first time he came up or the 2nd time?

Ans. The second time, I believe.

Int. How long was that before you went to Cass county?

Ans. I believe I told you once it was a month or two.

Int. Was it before or after you went down there to look at the farm?

Ans. It was before I went down.

Int. How long before you went down?

Ans. I cannot tell just how long.

Int. Tell as nearly as you can.

Ans. A month or two.

Int. A month or two?

Ans. I think so.

Int. Where was the first paper ever made that was made between the heirs and Mr. Burr?

Objected to [as] not cross-examination, and because it assumes that

she knows of some paper that was made, and I ask the court to exclude the evidence.

689 Ans. I do not believe I remember about that—where it was made.

Int. Do you remember?

(Last objection renewed.)

Ans. What paper is it you mean?

Int. The first contract or paper made between Burr and the heirs.

Ans. I heard them speak about it.

Int. Where and when first?

Objected to because not cross-examination, and that they ought to make this witness their own witness, because Lamb knows better than to ask such questions.

LAMB: I am learning rapidly.

BURR: It is objected to because Lamb is simply on a fishing excursion.

LAMB: I object for counsel for Giles making objections which tend to instruct the witness how to answer.

Ans. I suppose it was made in Lincoln.

Int. Where?

BURR: I object [as] not cross-examination.

Ans. I do not know where.

Int. Who were present?

Ans. I did not see any one present.

Int. Where you present when they fixed the papers up?

Ans. No, sir.

Int. Were you present when any of them talked with regard to that paper?

Objected to that the conversations of any of the heirs in the absence [of] Burr would not bind him, and that it is not cross-examination & Lamb knows it, and we ask the court to exclude it.

Ans. I think I heard them say something about it.

Int. Where was that?

690 Ans. At home.

Int. In the white house?

Ans. No; in Cass county.

Int. In Cass county?

Ans. Yes.

Int. Was Burr present?

Ans. No, sir.

Int. Did you hear any talk between Burr and Evaline with regard to the matter?

Objected to as not cross-examination, and Lamb knows it, and we ask the court to exclude it.

Ans. No, sir; I did not.

Int. Did you know of his having any talk with Evaline with regard to it?

(Last objection renewed.)

Ans. He never had any talk with her at my house.
Int. That does not answer my question.
Ans. No; I do not.
Int. Did you know of his having any talk with William?

Objected to as not cross-examination—Lamb knows it is not—and we ask the court to exclude it.

Ans. No, sir.
Int. Did you know of his having any talk with Albert?

Last objection renewed and also because she testified about all of the parties once before.

Ans. About the deed?
Int. Yes.
Ans. No.
Int. Do you know where William signed that deed?

Objected to as the deed is the best evidence, and is not cross-examination, and Lamb knows it is not, and we ask to have it excluded.

Ans. I think he signed it at our house.
691 Int. In Lincoln or Cass county?
Ans. In Cass county.
Int. Were you present?
Ans. I did not see him sign it.
Int. Were you present?
Ans. But I think he signed it.
Int. Were you present?
Ans. If I had been I would have seen him sign it.
Int. Were you in the house?
Ans. I do not know whether I was in the house or not, but I think he signed it there.
Int. Why do you think he signed it there?
Ans. I thought I heard him speak about signing it.
Int. At the time he signed it?
Ans. I don't know just when he signed it.
Int. Was it sent down, or did some one bring it down?
Ans. I think it was sent down; I am not sure.
Int. Did any one come down there to the house to have it signed by William while you were there?
Ans. Not that I remember of.
Int. Was it acknowledged by the officer in the house?

Objected to as not cross-examination, and we ask the court to exclude the evidence.

Int. Was it acknowledged by an officer in the house?
Ans. No, sir; I think not.
Int. What officer acknowledged it?

Objected to as not cross-examination, and Counsellor Lamb knows

it is not, and if he don't know it he ought to, and we ask that the evidence be excluded by the court.

Ans. I think it was Mr. Murphy.
Int. Where does Murphy live?
Ans. He lives in Plattsmouth.
692 Int. Was Burr there at the time?

Objected to as not cross-examination; Lamb knows it is not, and if he don't know he ought to, and the court is asked to exclude the evidence.

Ans. No, sir.
Int. Was he down at the time that paper was executed?

Last objection renewed.

Ans. No, sir.
Int. Was he not there that day, or the day following, or the day before?
Ans. No, sir; he was not.
Int. Where was Mr. Pickering at the time the deed was executed?

Objected to by Burr as not cross-examination; Counsel Lamb knows it is not, and we ask the court to strike it from the record.

Ans. I believe he was there; I am not sure.
Int. Did he not witness the deed?

Burr objects, as it is not cross-examination; that Lamb knows it is not cross-examination, and the deed is the best evidence, and I ask the court to exclude the evidence.

Ans. He did not.
Int. How long after that did he go away?
Ans. I do not remember what time it was.
Int. How long before that were you married?
Ans. I do not remember now how long.
Int. State as nearly as you can.
Ans. Four or five months, or five or six months; I do not remember.
Int. How long before you were married were you engaged?
Ans. Two or three months, I think.
Ques. When and where was the day of your wedding fixed; where were you at the time the wedding was fixed?
Ans. Where?
693 Int. Yes.
Ans. In Cass county.
Int. In Cass county?
Ans. Yes.
Int. You went from here down to Cass county to reside before you had the day fixed for the wedding, did you?
Ans. Yes.
Int. How long before the wedding was the day fixed?
Ans. I do not just remember now.
Int. State as nearly as you can; give your best recollection?

Ans. I went down there the first of the month, and was married the 14th day of December, or the 14th day of November.

Int. If you went down there the first of November, then was your wedding the 14th of November?

Ans. Just as I told you the 14th of November or the 14th of December.

Int. Were you married upon the 14th of the month that you went down there?

Ans. I told you I did not know which month it was; I did not go down in December; I went in November.

Q. Do you know whether you were married the 14th of December or the 14th of November?

A. I told you it was one or the other.

Q. How soon after you came down there was the day fixed?

A. I do not just remember.

Q. How many days after you went there was the day fixed?

A. A week or two, I think.

Q. How came you to get that farm down there; who brought it first to your attention; did Mr. Pickering?

A. I do not think he first told me about the farm—we wanted to buy a farm.

Q. Did he not speak to you about it when you were there?

Ans. Yes, sir; he spoke to me about it.

694 Q. Spoke to you before you went to look at it?

A. Yes.

Q. Was it talked of that it should be your future home?

A. I do not think it was talked of as our future home.

Q. Had he a farm there?

A. No, sir.

Q. Had he brought it to your attention before you went down?

A. I heard it spoken of before he mentioned it.

Q. From whom?

A. I do not know; some one came along and said there was a farm for sale.

Q. Came along where?

A. Stopped at our house and said there was a farm to sell.

Q. At your house where?

A. Here, in town.

Q. The white house?

A. Yes, sir.

Q. Who came along and stopped and told you there was a farm there? Do you know who it was?

A. I do not know who it was; they were talking with my son about the farm and I heard it.

Q. Did you hear that yourself?

A. I heard him say something to William about it.

Q. What kind of a looking person was he?

A. I do not remember now.

Q. Drive up in a buggy?

A. No.

Q. Passing along [by] the house?

A. Yes.
Q. And then Pickering told you there was a farm there?
A. Yes.
Q. Did he see William at the house?
A. Yes, sir; they were talking about it there.
Q. Would you know the man if you saw him?
A. I do not know whether I would or not.
Q. You do not know his name?
A. I do not know his name.
Q. Where was William, out-doors or in the house?
A. In the house.
695 Q. This man came into the house?
A. Yes.
Q. Did he say he came from Cass county?
A. I do not believe he did.
Q. Did he come with Pickering?
A. No.
Q. Did he mention this particular farm?
A. He said there was one there.
Q. Did he describe this one?
A. I believe he did; he said there was one at Factoryville.
Q. Did your son go down to Factoryville to look at the farm or did you?
A. No.
Q. And when Pickering came up you inquired of him about the farm?
A. He mentioned it first.
Q. Did he mention this same farm?
A. I suppose it was the place.
Q. Did he tell you the same things as this other man did?
A. Yes.
Q. Did this man tell you who was the owner?
A. I do not remember.
Q. Did he say how large a farm it was?
A. No.
Q. Did he tell you the price?
A. No; I do not think he did.
Q. Did he tell you the terms of the payment?
A. I do not remember.
Q. Did he not say to you how large that farm was?
A. I do not remember.
Q. Did he tell you the quality of the land?
A. I do not remember.
Q. Did he tell you how much was broken?
A. I do not remember anything about that.
696 Q. Did he tell you the number of buildings on it?
A. I do not remember.
Q. Did Pickering tell you how much property there was?
A. Yes; I think he did.
Q. Did he tell you what buildings were on it?
A. Yes; I think he did.

Q. How much property did he say was there?
A. He said it was a farm of about one hundred acres.
Q. Did he tell you the price?
A. I believe he told me what it could be bought for.
Q. Did he say anything about the other man having mentioned it to him that you know?
A. No.
Q. Did you mention that this other party had spoken to you about it?
A. I do not remember anything of the kind.
Q. How soon after that did you go down?
A. This was in the spring, and I went down in the fall.
Q. Did Pickering go down with you?
A. No.
Q. Did you meet Pickering down there and go to see the farm with him?
A. Yes, and with my son William.
Q. Who else?
A. A lady or two were with us.
Q. Some one that lived down there?
A. Yes.
Q. What time of the year was that in?
A. In the fall?
Q. What month?
A. It must have been in September.
Q. Did Pickering come back with you?
A. No.
Q. Was Pickering's first visit on horseback before or after that time?
A. Before that time.
Q. When was his second visit after that time?
A. He did not come down any more at all.
Q. He did not come down any more?
A. No.
Q. Did you conclude the arrangements to buy the place when you were down there?
697 A. No, we did not buy the place when we were there.
Q. When did you make arrangements to buy the place?
A. We made arrangements when there to buy the place and when here we were to pay for it.
Q. How long after that did you go down to take possession of the place?
A. We did not take possession of the place; we had another place.
Q. Did you rent the other place when down there?
A. I believe we spoke for it when we were there.
Q. Did Pickering finally conclude the arrangement for renting that house after you came back?
A. I do not know whether he did or not.
Q. Did he not do that and write you to that effect?
[A.] Either he or Appleget did. I think Pickering wrote to William about it.

Q. While you were living in the frame house here and before you moved down there did you ever hear any conversation between William and Mr. Burr with regard to this property?

A. No, sir; I never did.

Q. None whatever?

[A.] No.

Q. Were you ever down to his office (Burr's) and hear anything about it at his office or any conversation between them?

A. No.

Q. When William told you that he had made that deed to Burr did you ask him anything about it?

Objected to as not cross-examination, because Lamb knows it's not cross-examination, and if he don't know it he ought to know it, and the court is asked to exclude the evidence.

A. I do not remember of asking him.

698 Q. Did you not talk with him about it at all?

Last objection renewed.

A. I do not remember that I said anything to him about it.

Q. Did he send the deed by mail or was it brought up by some one?

A. I think it was sent by mail.

Q. Did you learn that from William, or did you see him mail it?

Objected to as not cross-examination. Lamb knows it's not cross-examination. If he don't know it he ought to; and we ask the court to strike out the evidence.

A. I do not remember about that.

Q. You know that he made it, and that is all that you know about it?

A. I know he must have made it.

Q. In whose handwriting was the deed?

A. I never read it.

Q. You did not read it?

A. No, sir; I paid no attention to it.

Q. Was any one else's name on it at the time he signed it?

A. I did not look at it.

Q. Did you ask William if any one else signed it?

Objected to as not cross-examination. Lamb knows it is not cross-examination, and if he don't know he ought to know it, and we ask the court to exclude the evidence.

A. No, sir; I did not ask him.

Q. Did you ask what he was deeding away?

A. No.

Q. Did he tell you?

Objected to as not cross-examination. Lamb knows it is not cross-examination, and we ask the court to strike out the evidence.

A. No, sir; he did not tell me.

Q. How soon after that did you find out that he had made the deed, and what he had deeded?
A. Well, I do not remember.
Q. You do not remember?

(No answer.)

699 Q. William had always lived with you down to that time, hadn't he?
A. Yes, sir.
Q. Had he any other property of his own?

Objected to as not cross-examination [and] Lamb knows it; ask the court to strike out the evidence.

A. Not that I know of.
Q. Did you know that he was making a deed of some property, and did not inquire what property he was deeding, did you?

Objected to as not cross-examination; Lamb knows it's not cross-examination, and we ask the court to strike out the evidence.

A. I did not inquire.
Q. Did you know to whom you was deeding it?

Objection to that it is not the best evidence; Walter J. Lamb knows it is not; and it is not cross-examination, and Walter J. Lamb knows it; and we ask the court to strike out the evidence.

A. I believe he said he was deeding it to Burr.
Q. Did you not ask him why he was deeding it?
A. No, sir; I did not.
Q. Did you not ask him what property he was deeding?

Objection renewed.

Q. Did he not tell you——
A. I did not ask what property it was.
Q. Did he tell you what he was to get for it?

Objected to; same reasons as above.

A. No, sir; he did not.
Q. And you did not ask him?
A. No, sir.
Q. Did you inquire how he came to deed it?

Objected to as not cross-examination; Lamb knows it's not cross-examination, [and we] ask the court to exclude the evidence.

No, sir; I paid no attention to that.
Q. Knowing that your son was making a deed of some property to Burr, and knowing as you did that he did not have any
700 property——

WITNESS, interrupting: William had no property down there.

Q. Had he any property here?

Objected to as not cross-examination, and Lamb knows he is going into this examination of one hundred and twenty pages and

upwards for the purpose of fishing and for no other purpose; that he is going into it in bad faith and not in good faith, and not to find out the truth of the direct examination, and we ask the court to strike out the evidence.

A. Not that I know of.

Q. Now you have sworn that you know he was deeding some property to Burr, and you did not know that he had any, and still you did not ask him anything about it; is that true?

By Mr. BURR: Mrs. Dawson, I think I would decline to answer that question.

A. I said he had no property down there.

By LAMB: I will repeat the question again. Had he any property up here?

Objected to, for the examination is made in bad faith and not for the purpose of eliciting the truth; and we ask the court to strike out the evidence, for Lamb is fishing in deep water.

LAMB: Will you answer my question?

A. I do not know of any.

Q. Now you have sworn that he did not have any property down there, and that he did not have any property up here that you know of, now state how it happened that when he told you he was going to make a deed to property, and when you knew that he was making a deed to some property, that you did not ask him what property he was deeding.

Objected to as not cross-examination, and because attorney Lamb goes to his mother to get advice of the property he con-
701 veys is no reason why William Dawson should go to his mother to advise with her about his business; and Lamb know that it is not proper, and not cross-examination, and the question is asked in bad faith, and we ask the court to strike it out; and for further objections that the purpose and object of this cross-examination on the part of Lamb is to carry this examination over until Mr. Hall can return home with some witness.

A. What is this property that you talking about? I am so confused I cannot think what you say.

Q. Do you mean his interest in this property under the will?

A. I suppose.

Q. You so supposed at that time, did you?

Last objection renewed.

A. Yes.

Q. What interest did you suppose at that time he had under the will?

Objected to; and we will state that we are very sorry that the train is late, and that the witness is not here; and we ask the court to strike out the evidence; and also object that suppositions testified

to could not be evidence in any respect in any manner or in any way.

A. Well, I do not know.

Q. Did he tell you?

Objected to what William Dawson told or said as to the interest he had under the will, as courts of considerable jurisdiction have differed upon this; and we object to the opinion of William Dawson upon the construction of the will.

A. I believe not.

Q. Did he say what interest he was conveying by that deed, or did he say?

A. I do not remember as he did

702 Q. Did he say whether the other children were also conveying their interest under the will or did you understand they were at the same time?

A. I suppose they were if he was.

Q. From whom did you get that supposition or impression?

Burr objects that suppositions and impressions cannot be given in evidence; and we call upon Mr. Lamb to hurry up the train to get their witness here.

A. I do not believe I remember that.

Q. Did he say to Pickering, or to you in Pickering's presence, at that time that they were conveying their interest under the will?

A. No, sir.

Q. Answer just what was said about it at that time if anything.

A. I do not remember as anything was said about it.

Q. Did not Mr. Murphy say, at or about that time, as to what interest was conveyed by William and the children?

A. Mr. Murphy said nothing to me about it?

Objected to by Burr as to what Murphy said.

Q. What led you at that time to suppose that the heirs were conveying only their interest in this property under the will?

Objected to, as Attorney Lamb well knows that this is not cross-examination, and that he well knows that the suppositions, or what led to the suppositions to suppose, cannot be given in evidence; that he knows he asks this question in bad faith and not to cross-examine this witnesss; and we ask the court to exclude the evidence and tax the costs of this deposition against the defendant.

A. I do not know as I can answer.

703 Q. You knew of no other interest they had to convey, did you?

A. No, sir; I did not.

Q. How long before that had you learned that the heirs had an interest under the will which you supposed they were conveying?

Objected to as not cross-examination; that Lamb knows that it is not cross-examination, and ask the court to reject the evidence.

A. I do not remember.

Q. State as nearly as you can.

Last objection renewed.

A. I do not remember.
Q. Was it as much as a week?
A. I do not know as I can remember.
Q. Could it have been just a day before?
A. I cannot tell.
Q. You have no recollection about it?
A. I have no recollection about it.
Q. Have you no recollection as to how long before you learned the heirs had an interest under this will that they were conveying?

Objected to as not cross-examination, and Lamb knows it is not cross-examination; the question is asked in bad faith, and the question has been asked several times, and we now ask the court to strike it from the records.

A. I cannot recollect.
Q. In what manner, before he made that deed, had you derived information that the heirs had an interest under this will?

Objected to, as it is not cross-examination, and Attorney Lamb knows it is not, and that he asks the question in bad faith,
704 and not to elicit the truth of the direct examination, and also that it is immaterial, irrelevant, and incompetent.

A. I do not know as I can tell.
Q. Did William tell you that they had any interest in the property before that date?
A. I do not remember.

By BURR: We object.

Q. Did Burr tell you?
A. Burr never told me.
Q. Did Wheeler tell you?
A. No, sir.
Q. Can you remember that any one told you?
A. I cannot remember.
Q. Had you seen it in the Journal before that date, at the time of the making of that deed, when you say you supposed you were conveying an interest of the heirs to that property?
A. I do not remember before or after.
Q. If it was not printed in the newspaper until after that date then your source of information must have been from something else other than the newspaper, must it not?

Burr objects and protests that Attorney Lamb has taken time enough asking questions outside of the subject-matter of the direct examination, and we ask the court to strike out the evidence, and also the answer.

A. I suppose so.
Q. Then if the newspaper was printed after that *date* of the date which contains this notice and which you have heretofore sworn to

was the first knowledge you had that the heirs had an interest in this property, you were mistaken in that testimony, were you not?

A. I suppose I must have been; I got mixed up somewheres.

Q. Then you did know of the interest of the heirs in this property, at the time Pickering was living there, and at the time William signed that deed, didn't you?

705 Objected to, as the witness has answered the question at least 15 times; that Lamb knows it, and he asks the question in bad faith; it is not cross-examination of this witness, and not in good faith, and we ask the court to strike the question and answer from the record.

A. Yes.

Q. Are you entirely unable to state now how long before that date you first learned that the heirs had an interest in that property?

We object to the question as not cross-examination, Lamb knows it is not cross-examination, and is incompetent, irrelevant, and immaterial; that the claim of Lamb is that the heirs have no interest in that estate and that the claims of the several attorneys who represent the defendants here are that the heirs have no estate in these premises whatever; that he is calling upon this witness to state her opinion as to whether or not, under the will, they have an interest.

A. I cannot remember.

Q. Was it as much as a year before that date?

The last objection is renewed, for Lamb knows that it is not cross-examination, and we ask the court to strike it out.

A. No, sir; I think not; I do not remember how long it was.

Q. How long ago was it after your meeting in early life that you first met him?

A. I do not remember.

Q. State as nearly as you can.

A. Five or six or six or seven years—five or six years, I think.

Q. You say in your examination-in-chief that within the
706 past few years you have met Mr. Pickering; do you mean by that five or six years or six or seven years?

A. Six or seven years, I think; I am not sure.

Q. Whence did he come when you first met him—five or six or six or seven years; whence did he come—I mean from what point did he come when you first met him after his return?

A. I told you once, from Ohio.

Q. From Ohio, was it?

A. Yes.

Q. Did he return from here to Ohio?

Objected to; that Mr. Lamb has gone over all this on cross-examination.

A. Yes.

[Q.] How long was he gone to Ohio before he returned again and you saw him?

A. I do not remember just how long.

Q. You say that you met him here in Lincoln, and that he came to your house; that he stopped there as a guest while in Lincoln?

A. Yes, he stopped both times.

Q. On the second return as well?

A. Yes.

Q. After his second return whither did he go?

Objected to, as it is simply a repetition of what Lamb has already cross-examined this witness upon.

A. Cass county.

Q. How long was his stay at your house upon the second visit?

Objected to, as the question has been asked before on cross-examination.

A. A day or two, two days, I think.

Q. Now fix the day and month, as near as you can, of that
707 second visit—day, month, and year of that second visit—to your house.

A. In February, I think, about the 7th.

Q. What year—the year that you were married?

A. I believe so.

Q. Was there any talk about marriage at his first visit that he made from Ohio here between you?

Objected to, because he has asked the same question two or three times.

A. Not much, I think.

Q. There was some then, was there not?

A. I think not.

Q. Why did you say not much if there was not any?

A. I do not remember mentioning it; it might have been mentioned.

Q. At the time Pickering was here upon the second visit, and at the time you were engaged to him to be married, was there any conversation between you as to what property he had?

A. Who had?

Q. Mr. Pickering had?

A. I do not remember about that.

Objected to as incompetent, irrelevant, and immaterial, and not cross-examination; Lamb knows it is not cross-examination, and we ask the court to strike it out.

Q. Was there any talk at all about property?

Objected to as not cross-examination, and Lamb knows it's not cross-examination, and we ask the court to strike it out.

A. Not that I remember of.

Q. Did you at the time mention to him anything at all about your property or about the Dawson property?

Objected to, as the lady has answered the question.

A. I might have said something about my own property; I do not remember now.

Q. What is your recollection; that you did state substantially without attempting to give the exact language?

708 A. Well, I do not remember now what it was.

Q. Can you remember nothing that was said by you about your own property?

We object to asking the witness to remember nothing. If he asked her to remember something we would not object, but to ask her to answer an impossibility we do object.

A. Well, I do not believe that I can remember.

Q. After the time that he came back from Ohio, the second time, and during the time he visited here, or during the several times he was up from Cass county, what did you tell him about selling your own property and investing it down there?

We object, as the lady has answered the question several different times that she could not remember anything that was said.

Mr. Lamb objects to counsel for respondents framing his objections in such a manner as will suggest an answer for the witness.

Mr. Burr protests that in the one hundred and fifty pages of long, hard cross-examination that this lady has subjected herself to that she has answered the question several times, and that counsel on the other side knows it, and especially Attorney Lamb knows the fact to be true.

A. I cannot remember now.

Q. Will you swear that you said nothing to him during any of those visits about your property?

Counsel for Giles objects again, for that attorney Lamb had an interview with Pickering on the day of his arrival in this town, when he told him of the amount of property that Mrs. Dawson had, and he is confusing the interviews; that he knows the witness has answered this question fairly, and that he is not conducting this examination in good faith.

709 A. No, sir.

Q. Now, as you have sworn that you will not swear that nothing was said about your property during those several visits, state, according to the best of your recollection, just what was said.

Objected to — the argument of counsel being put into his question to this lady, and we ask the court to strike out the evidence.

A. I think I said something about selling my house and lot.

Q. For what purpose?

A. Because I wanted to sell out, I suppose.

Q. What did you tell him you would do with the money?

A. I do not think I told him what I would do with the money.

Q. What was said at that time as to where you would go to live?

A. I believe we talked about going to Iowa, at one time, to live.

Q. In what interview was that talked, as nearly as you can re-

member—the second time that he came back from Ohio or one of the visits up from Cass county?

A. I do not remember which.

Q. State according to the best of your recollection.

A. The last visit from Ohio, I think.

Q. What property was it that you proposed to sell?

A. It was my house and lot that I was talking about selling.

Q. Anything else?

A. No.

Q. Anything said about any other property?

A. Not that I remember of.

Q. What finally determined your not going to Iowa?

A. Well, we could not get the place we wanted.

Q. Could not get what place?

A. We could not get the farm we wanted.

Q. Where in Iowa was it?

710 A. It was in Fremont county, Iowa.

Q. Why, at that time, did you propose to sell your house and lot instead of the other Dawson property that you had under the will?

Objected to, as the question assumes that she had property that came to her under this will at that time.

A. It was because I wanted to sell my house and lot and put it into a farm.

Q. Had you at that time sold all of the estate you took under the will?

A. No, sir; I had not.

Q. Was that still in the hands of Burr for sale?

Objected to, as it is not cross-examination, and that Lamb knows it is not cross-examination, and we ask the court to exclude it from the records.

A. At that time it was.

Q. Why did you prefer to sell your house and lot to that which was in the hands of Burr?

Objected to, because the deeds are the best evidence and will show what property was sold and at what time sold; that it is not cross-examination; that Attorney Lamb knows it is not cross-examination, and we ask the court to have the evidence stricken from the record.

A. I wanted to sell my house if I went away, so I could put it into a farm.

Q. Did you not want to sell that in the hands of Burr?

A. I calculated he should sell it for me if I sold it.

Q. Did you know at that time that the heirs had any interest in the property that was in the hands of Burr for sale?

Objected to as not proper cross-examination; Lamb knows it; if he don't know it he ought to, and that it assumes that any of this property was then in the hands of Burr, and the fact is that none of it was, and we ask the court to strike out the evidence.

711 A. I suppose they had.

Q. How long before that time had you supposed that they did have?

Burr objects to the suspicion and uncertainty of a "suppose" being asked of the witness by Lamb, and asks the court to exclude it from the record.

A. I do not remember now.

Q. Fix how long as nearly as you can.

Objected to, because the witness has answered in the last question.

A. I do not remember.

Q. At the time that you talked with Pickering about selling your house and lot and putting it into a farm in Fremont Co., Iowa, what led you to suppose that the heirs had an interest in the property under the will?

Last objection renewed, and we further object to counsel arguing his case in the record.

A. I do not remember now.

Q. How long was that time when you supposed the heirs had an interest in the property before the time that William made the deed, in Cass county, when you also supposed that he had an interest in the property?

A. That I do not remember.

Q. You have sworn that at the time of the second visit of Mr. Pickering from Ohio here, and at the time of the engagement, that you supposed that the heirs had an interest in this property; had you at any time before that time talked it over with William or the children with regard to what that interest was?

Objected to—the argument of the case before the examiner; we prefer to make it to the court; that the supposed suspicions that
712 this lady has are not competent evidence and not proper cross-examination, all of which Brother Lamb knows.

A. I do not know.

Q. How old were William and Albert at that time?

A. Indeed I do not remember now.

By BURR: What time do you mean?

LAMB: We are talking about the time you talked about selling your homestead and putting it into a farm in Fremont Co., Iowa.

A. I will have to study awhile before I could answer. I think William must have been twenty one or two, but I am not sure.

Q. And did you not talk with William or any of the children about their having an interest under the will?

Objected to, because counsel has asked the question fourteen times or more.

A. When do you mean?

Q. At or about that time, or any time.

A. No; not at that time.

Q. Not at that time?
A. No.
Q. Is it a fact, Mrs. Pickering, that prior to the time of your engagement to Mr. Pickering at his second visit here from Ohio, and subsequent to that time, at the time of making the deed by William of this property in Cass county, that you knew or supposed that your children had an interest in this Dawson property, and that you never talked with them about it; is that a fact?

We object to your speeches being made in the record at eleven o'clock at night.

A. I do not remember of talking with them.
Q. Did you, during any of that time, ever speak to Wheeler or Burr about it?

WITNESS asks: Of the children's interest?

713 Q. Yes.
A. No.
Q. From whom did you learn that they had an interest?

Objected to, as she has already testified several distinct times that she first learned it in the newspaper published in Lincoln, Nebraska.

LAMB: That they had an interest or supposed interest?

A. I cannot remember.
Q. You may state if you had any conversation with Wheeler from the time you employed Burr to the time you moved down into Cass county.

Objected to as not cross-examination. Lamb knows it is not cross-examination, and we ask the couit to strike it out.

A. Not to my recollection.
Q. Now, during all that time you knew or supposed that your children had an interest in the property under this will, did you at no time ask Burr, your lawyer, if they had or not?
A. No, sir; I never did.
Q. Never mentioned it?
A. No.
Q. Never mentioned it to him and ask what their interests were?
A. No.
Q. Did you ask any one?
A. No; I did not ask any one.
Q. Did you mention it to any one?
A. Not that I remember of.
Q. Did you mention it to Pickering what that supposed interest was?
A. I do not remember.
Q. Will you swear that you did not?
A. I do not remember.
714 Q. Will you swear that you did not mention to Pickering that you had an interest in that property?
A. No.

Q. Why did you keep it so secret and still during that time if you knew that your children had an interest in the property, not mentioning it to your lawyer nor to your children?

A. I do not know as I hardly know.

Q. Can you give any reason for not having done so?

A. I do not know as I can give any reason.

Q. From whom did William first learn that he had an interest; do you know?

A. No, sir.

Q. Do you know from whom any of the children learned that they had an interest?

A. It was published in the journal.

Q. When you saw it published in the journal did you talk it over together?

A. I did not talk much about it.

Q. Did you talk any about it?

A. I do not remember.

Q. Did you tell them at that time that you saw it in the newspapers?

Objected to for the reason that the records show in this case, which Attorney Lamb has just been called into and does not seem to understand it, that William R. Dawson and Evaline Dawson had been dead for some time at that time.

A. No, sir; they saw it themselves.

Q. Did you tell them, at that time, that you had known of it a long time?

A. No, sir; I did not.

Q. How long after William made the deed was it that you saw that notice in the newspaper?

A. I do not remember.

Q. Was it after William's death?

A. No, sir.

715 Q. It was not?

A. No, sir; I said.

Q. Was it the same year or the following year?

A. Which, that I saw the account?

Q. Yes; saw it in the newspaper?

A. I believe it was the same year; I am not certain.

Mr. Lamb states they are through with the examination of this witness, and have no objections to counsel for respondents cross-examining this witness upon anything that she has been examined upon in her cross-examination.

Mr. Burr objects that under the terms of the stipulation under which this testimony is taken no such privilege is asked for, and cannot be granted by them.

Redirect examination by Mr. BURR:

Q. Are you acquainted with Smith B. Galey, one of the counsel for plaintiff in this case?

A. Yes.

Objected to as not proper redirect examination.

Q. Is the Galey that you mentioned in your examination the same one?

Same objection as above.

A. Yes.

Q. He was your attorney in the probating of this will, was he not?

Same objection, and immaterial and irrelevant.

A. Yes.

Q. He was the attorney that laid out and platted Capital addition and Dawson's addition to South Lincoln, was he not?

Objected to as improper redirect examination, and as incompetent, irrelevant, immaterial, and leading.

A. Yes.

716 Q. Did he ever inform you anything about this will?

Objected to as not redirect examination of anything brought out on cross-examination and as incompetent, irrelevant, and immaterial and leading.

A. Not to my knowledge—not to my recollection.

Q. He was your attorney-in-fact, was he not, by power of attorney?

Same objection as above—leading and incompetent.

A. Yes.

Q. Was the house and lot that you speak of the same house as has been termed the "white house" that you sold to put into a farm in Cass county?

A. Yes.

Q. That house was in Capital addition, was it not, or near Capital addition?

A. In Capital addition.

Q. Next to Fitzgerad's place?

A. The same land.

Q. It is in the part of the land of which you got a patent from the Government of the United States, is it not?

Objected to as not proper redirect examination, and as incompetent, irrelevant, and immaterial and leading.

A. It was.

Q. Can you tell the court why it was that you sold your house and lot that was in Capital addition—what your object was?

A. The white house?

Q. Yes.

A. I put it into a farm.

Q. Why put it into a farm?

A. Because it was my home.

Q. Did your home in Capital addition bring you in any revenue or any income?

A. I should think it would at one time.

Q. I am speaking of just the house and lot—could you
717 make more money on the farm to support yourself and family than you could by keeping the house and lot?

A. I think I could.

Q. Did not your son William endeavor to buy a farm for you in Lancaster county, Nebraska, as well as Cass county and Iowa?

Objected to as not proper redirect —, and as incompetent, irrelevant, and immaterial.

A. I believe not.

Q. Had Mr. Pickering any property whatever?

A. Not that I know of.

Q. You say you sold a row of houses that you owned about the last thing before going to Union Mills? What row of houses were they?

A. It is the row that we traded for.

Q. It is the row of houses that you traded the Fitzgerald property for, is it not?

A. Yes.

Q. How many houses were there in that row?

Same objection as last above.

A. I think there were four; probably there were more than that. I did not own but four.

Q. Do you remember the rent you received from that, how much per month?

Objected to as not proper redirect —, and leading; assumes she receives rents, and as incompetent and immaterial & irrelevant.

A. I cannot remember how much it was.

Q. Can you tell about how much it was per month?

Same objection.

A. It seems to me that the largest house rented for fifty dollars per month. I think it did.

Q. And the small ones?

718 A. I do not remember just what they rented for.

Q. About half as much?

Objected to as leading, the question suggesting the answer, and as irrelevant, incompetent, and immaterial, and as not proper redirect examination.

A. Yes.

Q. Mrs. Dawson, at the time you sold your home, your house and lot, that you put into a farm, did you have any other property, either as a life estate or widowhood estate, or in fee-simple, other than just the home—the white house at that time—at the time you sold it and went to Cass county.

Objected to as not proper redirect examination, and as incompetent, irrelevant, and immaterial, and calls for the opinion of the witness upon a question of law instead of calling for facts.

A. I think not.

Recross-examination by Mr. LAMB:

Q. What difference, Mrs. Pickering, did you make between the white house up there, that you said was your own property, and the other property that you had under the will? You say that was your own property that you had under the will. That was your own too, was it not?

Objected to by Mr. Burr, as it is not recross-examination, and we object for the further reason that it is calling for the terms of the contents of deeds, which are not the best evidence; that the deeds would show for themselves; also the question calls for property that is not in controversy in this action.

Question repeated and counsel adds the following:

Q. Did you treat this as the children's property?.

Objected to, as the deeds would be the best evidence.

719 A. It was all my own at that time, I guess.
Q. Did you so regard it at that time?

Objected to as incompetent, irrelevant, and immaterial. We also object to all of these questions, as the examiner has no authority whatever to take evidence.

Burr further objects that Lamb has given warranty deeds to this property down there and is liable, and that the lady ought not to answer the question how she regarded it, as they are wholly immaterial as to the issues in this action.

Q. Did you at that time regard it as the children's property that you had under the will?

By Mr. BURR: Mrs. Dawson, I do not believe I would tell them how I regarded it.

Mr. LAMB: Do you decline to answer?

Mr. BURR: You should not insist upon an answer.

Mr. LAMB: Do you decline?

Witness declines to answer.

It is hereby stipulated and agreed by the parties herein that the signature of the witness is waived to this deposition.

Burr recalls the witness and asks the following question:

Q. In the sale of the Cody block by Mr. Galey for you did you receive a store in exchange as part of the price?

A. Yes; I think so.

Q. That is the store now known as the Devereaux store, on "O" street?

Objected to as incompetent, irrelevant, and immaterial.

A. I think so.

Q. What rents did you receive from that per month?

Same objection.

A. That store?

Q. The store known as Devereaux store?

A. I think it was seventy-five dollars a month; I am not sure.

720 It is hereby stipulated and agreed by and between counsel herein that Mr. Lamb may take the testimony of O. W. Lyon, and no other witness, on Monday morning next, and that counsel for Giles may rebut the same if they see fit with one witness, and no other testimony, and the examination is here closed as to this witness.

"EXHIBIT E." (Witness Dawson.)

Family Record.

Marriages.

Jacob Dawson and Editha Jane Ross, married Jan'y 28, 1848.

P'g. No. 97 at bottom of record by examiner.

Births.

Jacob Dawson, born M'ch 1, 1817.
Editha Jane Ross, born June 13, 1827.
John Hampton, born Dec. 3, 1848.
Mary Amanda, born M'ch 22, 1851.
William Ross, born Sept. 12, 1853.
Albert Lincoln, born Jan. 16, 1856.
Evaline Margaret, born July 2, 1860.
Melita Casander, born M'ch 22, 1864.
Minnie Sylvina, born Nov. 9, 1866.

P'g. 98 of family record, as marked by examiner.

721 Deaths.

Mary Amanda, died Aug. 9, 1852.
Jacob Dawson, died July the 22, 1869.
John Hampton Dawson, died Nov. 3, 1872.

P'g 100 of family record, as marked by examiner.

UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

I, J. Stuart Dales, examiner of the circuit court of the U. S. in and for the district of Nebraska, hereby certify that the above and foregoing is a true and correct copy of the family record of Jacob and Editha Dawson as same appears from the family Bible of said Dawson's, produced to me by the witness, Editha J. Pickering, upon her examination, at pages 97, 98, & 100 thereof, as marked by me and copied and hereto attached as Exhibit —.

Witness my hand this 12th day of Dec., 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

C. M. PARKER, first being duly sworn, testifies as follows on behalf of respondents:

By Mr. BURR:

Q. What is your occupation?

A. I am [at] present county judge of Lancaster county and State of Nebraska, and have custody of the records of the probate court, and the county court also.

Q. You have charge of the judgment record of that court?

A. Yes.

Q. Will you examine the record of the judgments in your office, and state what judgments have been rendered in your courts, or in the probate court of Lancaster county, or county court of Lancaster county, against Jacob Dawson.

722 Objected to as immaterial and irrelevant.

A. I have examined the records carefully and can find no judgment that has ever been rendered against the said estate. I have more especially examined the general index which covers the county court record as well as the probate record, and I find no judgment in any of the records against said estate in said court.

Q. Did you find any against Jacob Dawson? I mean against him were there any rendered—against him before he died?

A. No, sir.

Q. How far back did you look?

A. As far as sixty-eight—as far back as the records show—and there was nothing since that time.

Q. In your search of this record—these records—did you find whether he had been sued or not?

A. No; there is no evidence of any suit having been brought; his name did not appear as defendant or plaintiff in any suit.

Cross-examination by Mr. LAMB:

Q. Did you know Jacob Dawson in his lifetime?

A. No, sir; he died just a few months before I came to the city.

Q. Did you have any personal knowledge as to how much he was owing at the time of his death?

A. No; only from the records which I have sworn to.

C. M. PARKER.

Subscribed and sworn to before me and in my presence Dec. 9, 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. Neb.

A. D. BURR, being first duly sworn, testified as follows on behalf of respondents:

Q. What is your occupation?

723 A. Clerk of the district court, Lancaster county, State of Nebraska.

Q. Have you, as such officer, the custody of the records of the district court of Lancaster county, State of Nebraska?

A. Yes.

Q. Also the judgment record?

A. Yes.

Q. Will you examine the records of judgments in your office and state whether any judgment has been entered in or a transcript of judgments filed in your court against Jacob Dawson?

A. I do not find his name in the indices at all. There is no judgment of record in that court against him.

Q. How far back did you look?

A. From the beginning of the time in this county.

Q. Will you examine the records of your office, and state what actions have been commenced in that court wherein Jacob Dawson is defendant?

A. I have examined the general index, and I do not find the name of Jacob Dawson as a defendant upon the general index.

A. D. BURR.

Objected to as immaterial and irrelevant.

Subscribed and sworn to before me and in my presence Dec. 9, 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

O. C. BELL, being first duly sworn on behalf of respondents, testifies as follows:

By Mr. BURR:

Q. Are you deputy county clerk of this county?

A. Yes, sir.

Q. And as such deputy have you the care and custody of the records of Lancaster county?

A. Yes, sir.

724 Q. Do you know Martha Alexander, wife of D. B. Alexander?

A. I do.

Q. Did you examine the records to see if she was the owner of any real or personal property?

A. I examined the records to see if she owned any real estate.

Q. With what success?

Objected to as immaterial and irrelevant.

Q. What was the result of that examination?

A. I found one piece of property in her name, I believe; that was all.

Q. What was that?

A. (Witness reading from paper.) Parts of lots three (3) and four (4), in block fifty-four (54), of the city of Lincoln.

Q. She had no other property?

A. That is all I found in her name.

O. C. BELL.

Subscribed in my presence and sworn to before me this 9th day of Dec., 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

The testimony of the witnesses, C. M. Parker, O. C. Bell, and A. D. Burr, immediately above, was taken on the 9th day of December, 1882, before me by agreement of counsel during the examination of Mrs. Pickering.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, C. L. Treavitt, hereby certify that the above is a true and correct report of the testimony of Mrs. Dawson Pickering, C. M.
725 Parker, O. C. Bell, and A. D. Burr, as taken in short-hand by and translated to and in the presence of Examiner Dales, saving clerical errors and such corrections as appear in the record, made by said examiner on translating and comparing same.

C. L. TREAVITT, *Rep't.*

DEC. 11TH, 1882.

Examination of witnesses herein resumed at 9 o'clock a. m., according to the stipulation of the counsel for parties herein made before me Dec. 9, 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

O. W. LYON, being produced as a witness for complainant, of lawful age, and being first duly sworn, on his oath says:

Int. 1. State your name & residence.

Ans. O. W. Lyon; residence, South Lincoln.

Int. 2. State whether or not you own any of the property in Dawson's — South Lincoln; if so, how [long] have you owned it, and what is the description?

Ans. I do; don't delieve I can tell how long I have owned it, 3, 4, 5, or 6 years. It is lots 1, 2, 11, & 12, in block 25, in Dawson's addition to South Lincoln.

Int. 3. From whom did you buy it?

Counsel for Giles objects that the witness has now shown that he is the owner of property not in controversy in this action, and that the question is immaterial & irrelevant.

Ans. From L. C. Burr.

Int. 4. State what conversation, if any, you have had with L. C. Burr touching his ownership and a conveyanse to you since this controversy arose over the interest of the Dawson heirs under Dawson's will.

Objected to as incompetent, immaterial, and irrelevant, and that counsellor knows the fact.

Ans. I don't know where to begin; you want the whole
726 story, do you? This conversation happened about the time of the report of this decision in Washington. If you want it all I will have to tell it just as it is. Do you want to know what day that was on?

Counsel for Giles objects again that for years prior to that the conveyance of Burr to Giles had taken place, and that the record shows that Giles was the only owner of the title, and that any statements claimed by this witness to have been made in the absence of Giles could not bind him.

WITNESS: Which one do you want?

LAMB: Go on; tell it all.

Well, sir, on Sunday evening I was down at the barn feeding my cows. My boy (oldest) came down and said, Burr is out here and wants you. I started out to the street; met Burr about middle of the lot. He reached out his hand; said How do you do; you have showed me a kind of a coolness. I suppose I made some—I can't tell just what kind of a remark. We walked out to the street where his carriage stood. He introduced me there to a gentleman by the name of Wheeler, I think. Well, sir, he introduced me to Wheeler, turned round and said, I want you to come down to my office in the morning & get a deed. I said, You can't make me a deed. Wheeler spoke and said he can. I said he can't. Burr, I think, made the remark, "We will see about that," or something like that there somewhere. Wheeler remarked, "We have got the papers here to show it." Burr turned around and give me his hand and said, "Now, see here; you come down in the morning and we will fix that up." I said, you can't do it. I have got a better deed than you can make, for that thing is not decided yet. He says, "You come down in the morning and draw up any instrument in writing you have a mind to, and I will sign it; but I tell you what I want
you to do." I says, You can't get me to agree to anything
727 without counsel. "Who is your counsel?" "Billingsley," I said. Burr says, "Write up any instrument in writing and bring it down in the morning, and I will sign it." I says, "I writes nothing, but I'll have it done." That is about all that was said then. There was some other words that did not amount to anything.

Int. 5. Was there any other conversation at any other time that you now remember of? If so, give it.

Counsel for Giles objects as incompetent, irrelevant, and immaterial. The question is asked relating only to property described by the witness, and Counsellor Lamb knows that it is not proper evidence, and should not be put in here to incumber this record to create sympathy on behalf of complainants.

Ans. Yes; there was a little Monday morning. I went into his office. There was some conversation about us fellows that lived out on that property there, and especially those that he had sold to—that they had got a notion that they were to be kicked off of there, or in substance that, but he did not intend to do anything of

the kind—that they must quit fighting him—that was about the amount of the conversation; there was no deed drawn.

Int. 6. Was there any other conversation with him or Wheeler about it? If so, state it.

Counsel for Giles objects that it is incompetent, immaterial, and irrelevant.

Ans. I had Billingsley draw up that writing—that is all I know about it.

Counsel for Giles also objects that this answer is not responsive to any question; that Mr. Billingsley was Mr. Lamb's partner, and that anything that Billingsley or Lamb did for this witness, that they are the only competent witnesses to that fact, if it be competent,
728 and we object to Lamb putting in evidence of acts done by himself or by his partner by this witness not claimed to have been done in the presence of Giles or Burr or Wheeler, and that Counsellor Lamb knows that he is putting that into the record which he knows is incompetent, immaterial, and irrelevant, and we ask the court to strike [out] the evidence.

Int. 7. State what Mr. Burr said to you with regard to this matter and to your giving testimony in this case as a witness again him this morning on your road to this room to testify?

(Same objection as last above stated.)

Ans. He said something about my swearing against him. I made a remark that I did not know that I was swearing against anybody in particular, only to give facts; that all the lots out there could not induce me to tell anything but the facts; that is about the amount of it; don't know as it is all the language.

Cross-examination:

Int. 1. Are you now willing that the lots named by you —, and that your name shall be entered of record as one of the plaintiffs in this action?

Objected to as not cross-examination of anything asked in chief, and as immaterial & irrelevant whether he is or not.

Ans. I don't know.

Int. 2. Have you any objections that Mr. Lamb should continue to act as you attorney in this action, and that the lots named should abide the decree in this case? State what objections you have.

Objected to for reasons that Lamb has not appeared of record
729 or for the witness in this action, and has not been employed to do so, and that it is entirely immaterial and irrelevant whether he is willing that Lamb should or not until he employed him, and because it is not cross-examination of anything asked in chief.

Ans. I don't know; the other part of the question I can't answer without consideration; I should have to say I don't know.

Int. 3. When did Mr. Lamb call upon you to be a witness in this case; when did you first see him about it?

Ans. This morning.

Int. 4. Did you not see him before about it?

Ans. No; I did not see him about it at all.

Int. 5. Who signed the deeds to your lots; did L. C. Burr?

Ans. No, sir.

Int. 6. Up to the time you took possession of any of the lots you have named do you swear that L. C. Burr owned any of the lots?

Ans. No, sir.

Int. 7. You know as a fact he did not?

Ans. No, sir; don't know anything.

Int. 8. Will you swear again to the court that he did not own them?

Ans. I don't know whether there is any objection yet to that question.

Int. 9. Please answer the question.

Ans. No, sir.

Int. 10. Will you swear to your knowledge that he ever owned them prior to the time that you took possession of them?

Objected to as not proper cross-examination, and the record is the best evidence as to who owned the property, and that the wit-
730 ness has only been asked as to who he bought the property of and nothing with regard to the ownership.

Ans. No; I can't swear to that.

Int. 11. You only swear, as I understand you, to the substance of the conversation had with Burr and Wheeler, as best you can remember; do you not?

Ans. Yes.

O. W. LYON.

Subscribed in my presence and sworn to before me this 11th day of Dec., 1882.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

H. H. WHEELER, being produced as a witness for respondent Giles, and of lawful age, and first duly sworn, says:

Int. 1. State what conversation you heard between L. C. Burr and O. W. Lyon in a carriage near Lyon's residence in South Lincoln about a year and a half ago, or after decision of S. C. U. S. under Dawson's will.

Objected to as not proper rebuttal testimony, because no time and place is fixed sufficient to admit an interrogatory.

Ans. I can only remember the substance of the conversaion. Mr. Burr introduced Mr. Lyon to me & Mr. Lyon expressed anxiety about his title to his lots; said he had bought the property through Burr, and made improvements thereon—fruit trees. Burr tried to allay his apprehension; told him the people in South Lincoln would

probably not be disturbed until after the question of the title to the "O" street property was decided, if at all. Lyon wanted some writing. Burr did not promise to give him any writing; told him he would see him again; that it would go hard for him to lose his improvements; did not think he ought to. I never spoke a word to
731 Mr. Lyon, unless, when introduced, to say how do you do, or something equivalent.

Int. 2. State whether or not you are a practicing attorney or counsellor-at-law, or have been since your residence in Neb.

Objected to as incompetent and irrelevant and immaterial and not proper rebuttal testimony.

Ans. I have never been admitted to practice law in the district court of the State of Nebraska or the district or circuit courts of the U. S. I have never practiced law, attempted or pretended to, in any of these courts, unless where I was interested.

Int. 3. What advice or counsel did you give to the Dawson heirs, or any of them, or to the Widow Dawson concerning their title under the will, or any other matter?

Objected to as not rebuttal testimony, incompetent, immaterial, & irrelevant.

Ans. None whatever.

Cross-examination:

Int. 4. When and where were you admitted as an attorney?

Ans. Windsor county, Vermont, in the county court, Dec., I think, 1871.

Int. 5. How long after that did you live in Vermont, or in any way practice your profession in that State?

Ans. No time whatever.

Int. 6. When and where have you practiced law at all since you were admitted to the bar?

Objected to as incompetent, immaterial, and irrelevant.

Ans. I never practiced law, unless to try a few cases in justice courts, or in cases where I was a party from the time I left Vermont
732 until I came to Nebraska, unless it be to give friendly advice, nowhere.

Int. 7. Have you been admitted to the supreme court of the State of Nebraska as a lawyer, and are you one of the attorneys-at-law now admitted in that court?

Objected to as imcompetent, immaterial, and irrelevant under the issues.

Ans. I was admitted in the supreme court of Nebraska, but being appointed deputy clerk of that court about that time I have never pretended or attempted to practice, being debarred by the statute of Nebraska. Laws 1877, sec. 1, p. 139.

HILAND H. WHEELER.

Subscribed in my presence and sworn to before me this 11th day of December, 1882.

J. STUART DALES,
Examiner U. S. C. C., District of Neb.

Dec. 11th, 1882, at 11.30 o'clock a. m., this examination being closed, the examiner asks counsel for each party present if they have any more evidence to take in this cause, and they answering in the negative and declaring all of their testimony taken, the examination in this case of witness is by the examiner declared to be closed finally.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Neb.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, J. Stuart Dales, an examiner in chancery of the circuit court of the United States in and for the district of Nebraska, hereby certify that on the 2nd day of December, 1882, and at the several times hereinbefore set forth, personally came before me at the office of the clerk of the district court of 2nd judicial district of Nebraska
733 in and for Lancaster county, in Lincoln, in said county and State, the several witnesses on behalf of the complainant and respondents in the above-entitled cause and named in these depositions, which said witnesses were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that the testimony of said witnesses was reduced to writing by myself at said place and at said times, and was by said witnesses respectively signed in my presence, and by me subscribed in their presence, after being first read over to them respectively, except as to the witness Mrs. Dawson Pickering, whose testimony on cross-examination was taken in short-hand, and by me written out in part, and all done under my immediate direction, and the signature of said witness waived, and all as appears by stipulation of parties in the body of this record, and that said depositions of said witnesses were taken by & before me at the times and place aforesaid, pursuant to the stipulation of the parties in said cause, a copy of which is hereto attached; that I am not counsel or attorney for or in any manner related to any of the parties to this suit or interested in any manner in the event thereof; that the several papers hereto attached as Exhibits "A," "B," "C," "D" are the original papers and documents produced to me by said witnesses respectively upon their examination, and the same were by me attached hereto and made a part hereof at the instance of said witnesses; that the several papers hereto attached, marked Exhibits Nos. 1, 2, 3, 4, 5, 6, & Ex. "E," and the certified statement immediately following the deposition of the witness G. E. Torrey were all of them copied from and carefully compared by me with the original documents and books of records produced and referred to by the witnesses respectively upon their examination, and the same, after being certified to by me, were by

me hereto attached and made a part hereof as such exhibits;
734 that these depositions have been detained by me for the purpose only, and for the time necessary to arrange and certify the same and none other.

In testimony whereof I have hereunto set my hand officially at Lincoln, in said district, this 12th day of Dec., A. D. 1882.

J. STUART DALES,
Examiner in Chanc., U. S. C. C., Dist. of Neb.

Bill of Costs.

Complainants' costs.

Examiner—	Taking 70 folios dep. at 20	$14 00		
	Filing 4 exhibits at 10	40		
	Filing & certifying 6 exhibits at 35	2 10		
	Swearing 5 witnesses	50		
	Expressage	25		
	Final certificate	25		
	Paid by complainant		$17 50	
Witnesses—	C. C. Burr, 1 day	$1 50		
	W. W. Holmes, 1 day	1 50		
	W. W. Wilson, "	1 50		
	O. C. Bell, "	1 50		
	O. W. Lyon, "	1 50		
			7 50	
				$25 00
	Total complainant's			$25 00

Respondents' costs.

Examiner—	Taking 275 folios at 20	$55 00		
	Filing 2 exhibits " 10	20		
	Filing & certifying 2 ex. at 35	70		
	7 witnesses sworn	70		
	Expressage	25		
	Paid by respondents		$56 85	
Witnesses—	Mrs. Dawson Pickering, 1 day, 55 m.	$7 00		
	C. M. Parker, 1 day	1 50		
	O. C. Bell, "	1 50		
	A. D. Burr, "	1 50		
	C. T. Boggs, "	1 50		
	G. E. Torrey, "	1 50		
			$14 50	
				$71 35

735 Total, respondents $71 35
" complainants 25 00

Total costs on depositions $96 35

The above is correct as taxed by me.

J. STUART DALES,
Examiner U. S. C. C., Dist. of Nebr.

On margin: Short-hand reporter's fees, by agreement of parties, $48.10, without costs to resp'ts.

Upon the back of said depositions appear endorsements in words and figures following, to wit: In the circuit court of the United States, dist. of Nebraska. S. W. Little *et al.*, comp., *vs.* Ezekiel Giles, resp. Depositions on behalf of both complainants and respondent taken by and before J. Stuart Dales, an examiner of said court, pursuant to stipulation of parties. These depositions taken by and before me, and by me sealed up, endorsed, and transmitted to Elmer D. Frank, clerk of said court, Omaha, Nebr. J. Stuart Dales, examiner U. S. C. C., dist. of Neb. No. 202, F. Rec'd Dec. 15, 1882, and opened by of court Dec. 28, 1882. Elmer D. Frank, clerk.

736 Thereupon, afterwards, at the January term of said court, on the 1st day of January, 1883, the following proceedings were had and done, as appears of record on folio 297, Journal "H," of said court, to wit:

S. W. LITTLE *et al.*, Complainants,
vs.
EZEKIEL GILES, Defendant,
and
EZEKIEL GILES, Complainant,
vs.
S. W. LITTLE *et al.*, Defendants.

Original Bill. 202, F.
Cross-bill. 202, F.

This cause came on to be heard at the last term of the court, upon the motion of the defendants in the original bill and the plaintiff in the cross-bill, and was argued by Mr. Woolworth in support of the motion and Mr. Marquett in opposition thereto, and the court took the same under advisement until this first day of January, A. D. 1883.

Whereupon it is ordered by the court that J. E. Baum be, and he is hereby, appointed receiver to take possession of certain of the premises in question in said suits and collect all rents now or that have become and shall accrue and become due and payable thereof, to wit: The west half of lot three and all of lots four, five, and six, in block fifty-four, of the city of Lincoln, Lancaster county, Nebraska; also the west half of the southest quarter of section nineteen, town. ten, range seven; also the southeast quarter of the southeast quarter of section thirty-five, town. ten, range six, all in said county; also all of block thirty-nine in Dawson's addition to South Lincoln, in said city; and the defendants in said cross-bill, to wit, S. W. Little, Martha Alexander, D. B. Alexander, A. P. S. Stewart, Samuel G. Owen,

and Rollin H. Oakley, Allen W. Hawley, H. O. Snow, George Warden, Samuel Arthur, G. W. Lashus, W. J. Van Dorn, and
737 Clarinda A. Bunstead, and their several and respective tenants of the aforesaid premises are hereby required to pay the rents, issues, and profits of the same to said receiver as the same have accrued and shall accrue and become due and payable.

It is further ordered that the said receiver apply the said rents, as the same shall come to his hands, to redeem the taxes which have accrued on said premises, and on account of which the same have been sold, and also all the taxes which have or may become due thereon.

It is further ordered that said receiver lease said premises to the best advantage and price possible and report his doings thereon to the court for its approval.

It is further ordered that said receiver give a bond to the clerk of this court for the benefit of all parties to these suits with two or more sureties, to be approved by the clerk of said court, in the penal sum of fifteen hundred dollars, conditioned to faithfully perform his duty as such receiver, and pay over and report monthly of and concerning all money and account for all property which may come into his hands by virtue of his appointment as receiver at such times and in such manner as the court may direct and obey the orders of said court in this behalf, and no monies to be expended by the receiver until specially authorized by the court.

Thereupon, afterwards, at the January term of said court, on the 23rd day of January, 1883, the following proceedings were had and done, as appears of record on folio 366, Journal "H," of said court, to wit:

S. W. LITTLE *et al.*
vs. } 202, F.
EZEKIEL GILES *et al.*

Upon motion in their behalf that guardian *ad litem* be appointed for Minnie S. Dawson and Carleton Dawson, minors, it is
738 ordered that the parties show cause, if any they have, why the court should not appoint guardians for said minors for the purposes of this case, and that five days' notice of this rule be given.

Thereupon, afterwards, at the January term of said court, on the 30th day of January, 1883, the following proceedings were had, as appears of record on folio 397, journal "H," of said court, to wit:

Appointment of J. M. Woolworth Guardian ad Litem.

S. W. LITTLE *et al.*
vs. } 202, F.
EZEKIEL GILES *et al.*

It appearing that the defendants, Minnie S. Dawson and Carlton Dawson, are under the age of twenty-one years, it is therefore ordered that James M. Woolworth, Esq., one of the solicitors of this court, be, and he is hereby, appointed guardian for said infants and each of

them, for the purpose of this suit, and thereupon said Woolworth appeared at the bar and accepted the trust aforesaid, and thereupon applied to the court for leave to answer the bill for his wards aforesaid.

Thereupon, afterwards, at the said January term of said court, on the 30th day of January, 1883, the following proceedings were had, as appears of record on said folio 397 of said court, to wit:

S. W. LITTLE *et al.*
vs.
EZEKIEL GILES *et al.*
} 202, F.

This cause coming on to be heard, upon motion on behalf of the defendants, Minnie S. Dawson and Carlton Dawson, for leave to file another and further cross-bill, it is ordered that the same be, and is hereby, overruled.

Thereupon, afterwards, to wit, on the 30th day of January, 1883, acceptance of proof heretofore taken by infant defendants was
739 filed in said case, which said acceptance is in words and figures following, to wit:

In the United States Circuit Court, District of Nebraska.

S. W. LITTLE *et al. vs.* EZEKIEL GILES *et al.*

Now come the defendants, Minnie S. Dawson and Carlton Dawson, by James M. Woolworth, their guardian *ad litem*, and accept the proofs heretofore taken and filed in this cause as binding on them and submit the cause and their rights and interests therein to the court upon the same, and do not desire further to adduce testimony in this cause.

JAMES M. WOOLWORTH,
Guardian ad litem for said Minnie & Carlton Dawson and of Counsel.

Upon the back of said acceptance appear endorsements in words and figures following, to wit: No. 202, F. Little *et al. vs.* Giles *et al* Acceptance of proof heretofore taken by infant defendants. J. M. Woolworth, guardian, &c. Filed Jan. 30, 1883. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 30th day of January, 1883 answer of infants was filed in said case, which said answer is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

The answer of Minnie S. Dawson and Carlton Dawson, infants under the age of twenty-one years, by James M. Woolworth, their guardian *ad litem*, defendants to the bill of complaint of S. W. Little *et al.*, plaintiffs.

These defendants, answering by their guardian, James M.
740 Woolworth, say that they are and each of them is an infant under the age of twenty-one years, and they therefore submit

their rights and interest in the matters in question in this cause to the protection of this honorable court, without this that any other matter or thing material or necessary for these defendants to make answer unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants, all which matters or things these defendants aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

JAMES M. WOOLWORTH,
Guardian ad litem for Def'ts in above answer & of Counsel.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 202, F. Little *vs.* Giles. Ans. of infants. J. M. Woolworth, guardian *ad litem* and of counsel. Filed Jan. 30, 1883. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 23rd day of February, 1883, memorandum of court was filed in said case, which said memorandum of the court is in words and figures following, to wit:

In the Circuit Court of the U. S. for Nebraska. In Equity.

S. W. LITTLE *et al.*
vs.
EZEKIEL GILES *et al.*

Bill to Quiet Title.

I hold that the title to the premises in dispute is not in the complainants, or any of them; that none of the Dawson's heirs, through whom the defendants Giles derive title, are in any way estopped from asserting title to any or all of the premises in controversy, so far as the complainants are concerned; that nothing has
741 been established by the proof that would estop L. C. Burr, one of the grantors of Giles, or those claiming under him, from asserting title to any and every part of the premises described in the bill. For these reasons the bill must be dismissed at the complainants' costs, and it is so ordered. No disposition will be made of the cross-bill at the present time, but parties may be heard thereon at the adjourned term of the court, if they so desire.

ELMER S. DUNDY, *Judge.*

Upon the back of said memorandum appear endorsements in words and figures following, to wit: No. 202, F. Little *et al. vs.* Giles *et al.* Memorandum of the court. Filed Feb. 23, 1883. Elmer D. Frank, clerk.

Thereupon, afterwards, at, to wit, on the 4th day of June, 1883, a motion for reference of cross-bill was filed in said case, which said motion is in words and figures following, to wit:

Motion for an Order of Reference.

Circuit and District of Nebraska. In Equity.

EZEKIEL GILES
vs.
S. W. LITTLE *et al.* } 202, F.

The defendants to the cross-bill of Ezekiel Giles move the court for a reference of said cross-bill and answer to a special master to be appointed for that purpose to severally report on the following matters:

1. What portions of the lands and tenements in the cross-bill described were, at the time of the filing of said cross-bill, in the quiet and peaceful possession of said defendants, or any of them claiming title thereto for which such defendants can show a plain and
742 connected title, either in law or equity, derived from the records of some public office, or from the United States, or this State, or derived from any such person by devise, descent, deed, or contract; and whether any of said defendants, or any person through whom they claim, have made any lasting or valuable improvements on such real estate, and if they have to find and report the character, description, and value thereof, and when the same were made upon said real estate, and whether they have paid any taxes or assessments upon such real estate, and, if so, the amount and times of payment, and what the same would amount to on said several tracts, computing interest thereon at the rate of interest provided by the laws of the State of Nebraska for delinquent taxes, and what sums the said defendants, or any of them, have paid to redeem any of said lands from tax sales.

2. Whether at the times of making the said improvements or paying the said taxes the said several defendants and the persons under whom they claim claimed title thereto in good faith and without any collusion or fraud and in the honest belief they owned said premises in fee.

3rd. What was the value of the several tracts of land without the improvements on the 15th day of November, 1879?

4th. What was the value of the improvements on the several tracts on the 15th day of November, 1879?

5th. What would have been a fair land rent for the several tracts of land without the improvements for each year since Nov. 15, 1879?

6th. What was a fair rental value for the several premises occupied with the improvements since Nov. 15, 1879, each year? What amount of takes did any of the defendants not in possession pay, or their grantors? At what date did the several defendants receive notice of the plaintiffs' title by service of process on them, and during what periods did they occupy the premises?

743 7th. What was the value of the valuable and lasting improvements on the several tracts at the time the several defendants received notice of the plaintiffs' title by service of process on them?

8th. What has been the value and the net annual value of the rents and profits of the several tracts since the occupant received notice of the plaintiffs' title by service of process on them, which the defendants have received?

9th. What is now the value of the several tracts of land without the improvements thereon, and what including the improvements? What is the present fair rental value of the several tracts of land with the improvements thereon, and what would be a fair annual land rent for the several tracts of land without the improvements thereon?

10th. What is the balance or difference between the value of all lasting and valuable improvements which any of said defendants, or any person under whom they claim, have placed upon any of the said tracts of land prior to their receiving notice of the plaintiffs' title or claim by service of process on them, and the net annual value of the rents and profits which they may have received from said premises after they had received notice of the plaintiffs' title by service of process on them?

11th. If such balance or difference is in favor of Giles on any of said tracts, what then is the difference or balance between such difference and the aggregate amount of all such taxes and interest, computed as aforesaid, paid by any such defendants on said tract subsequent to the 15th day of November, 1879, or paid to redeem such tract from any tax sale for taxes before such occupant had received actual notice by the commencement of suit on such title claimed by said Giles?

744 That the testimony taken in the cause may be referred to said master and the parties may adduce such further evidence on said matters so referred as they may desire.

N. S. HARWOOD AND W. J. LAMB,
Sols. for Def'ts.

Upon the back of said motion for reference appear endorsements in words and figures following, to wit: No. 202, F. S. W. Little *et al. vs.* Ezekiel Giles. Motion for reference of cross-bill of Ezekiel Giles and answer thereto to master. Filed June 4, 1883. Elmer D. Frank, clerk, by A. L. Frank, deputy. T. M. Marquett, Harwood and Ames, & W. J. Lamb, sols. for Little *et al.*

Thereupon, afterwards, to wit, on the 6th day of June, 1883, a stipulation was filed in said case, which said stipulation is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

LITTLE *et al.* *vs.* GILES *et al.* } Original Bill.

GILES *vs.* LITTLE *et al.* } Cross-bill.

Comes now the said Giles, by L. C. Burr his attorney, and Little

et al., defendants to the cross-bill, by W. J. Lamb, their attorney, and stipulate and agree that W. R. Kelly, Esq., of Lincoln, Nebraska, shall be by the said circuit court appointed the special master, to whom the said cause shall now be referred with further directions by said court.

L. C. BURR,
Sol. for Ezekiel Giles.
WALTER J. LAMB,
Sol. for S. W. Little et al.

June 5, 1883.

745 Upon the back of said stipulation appear endorsements in words and figures following, to wit: No. 202, F. Little *vs.* Giles. Giles *vs.* Little. Stipulation filed June 6, 1883. Elmer D. Frank, clerk. L. C. Burr, for plaintiff.

Thereupon, afterwards, at the May term of said court, on the 14th day of June, 1883, the following proceedings were had, as appears of record on folio 690, Journal "H," of said court, to wit:

S. W. LITTLE, SAMUEL ARBUCKLE, D. B. ALEXANDER, A. J. Sawyer, S. G. Owen, Lorenzo Assmesson, R. H. Oakley, Sarah J. Purcell, A. B. S. Stewart, Thomas R. Clark, Mary A. McElhinney, D. C. Kinsell, Hannah Selwood, Alexander C. Huestes, Allen W. Hawley, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, A. F. Lewis, Samuel Arthur, G. F. Thornton, Sarah Cummings, William H. Rundell, Jacob Freedman, O. P. Austin, J. A. Buckstaff, Mary T. McNair, George D. Camp, Wilber F. Kellogg, Elizabeth N. Chase, Sarah A. Gable, Samuel Aughey, Clarinda A. Bumstead, Elizabeth Paden, Martha E. Snowden, Thomas Woods, Joseph Hoagland, Eliza W. Pillsbury, Henry V. Hoagland, W. S. Garrison, C. L. Hooper, S. E. Story, V. E. Farmer, Josephine St. Louis, Frank J. Wassika, Ellen N. Miller, John H. Schwabold, Hellen Weber, Samuel Henderson, Christian Bohlman, Joseph Richardson, Patrick Lyons, W. Sandford Gee, Allen Cogswell, M. B. Cheeney, Mary E. Maloney, Emma E. Beach, Barrett F. Loath, Francis D. Howell, L. S. Howell, Samuel D. Bacon, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Jacob Freedman, Samuel T. English, Guy A. Brown, H. O. Snow, George Warden, D. D. Muir, George W. Severance, Rody A. Prindle, Mina W. Brown, W. J. Van Dorn, and G. W. Lashus

vs.

EZEKIEL GILES, L. C. BURR, H. H. WHEELER, Albert L. Dawson, M. C. Dawson, William R. Dawson, Sarah H. Dawson, M. S. Dawson, A. A. Kniceley, William A. J. Goodwin, Melita C. D. Tillman.

} Original Bill.

746 EZEKIEL GILES
vs.
S. W. LITTLE, D. B. ALEXANDER, and MARTHA, His Wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, A. P. Stewart, Mary A. McElhinney, Alexander H. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arthur, Jacob Freedman, O. P. Austin, Sarah A. Gable, Samuel Aughey, Clarinda A. Bumstead, Martha Snowden, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Barnum, H. O. Snow, George Warden, Rhody A. Prindle, Charles Hanna, Mary E. McSweeney. } Cross-bill.

These causes came on to be heard upon the pleadings, proofs, and exhibits, and were argued by Messrs. Marquett, Harwood, and Lamb for the plaintiffs in the original bill and the defendants in the cross-bill, and by Mr. Woolworth for the defendants in the original bill and the plaintiffs in the cross-bill, and as guardian *ad litem* for the infant defendants, Minnie S. Dawson and Carlton Dawson, and thereupon this court finds—

1. That the plaintiffs in the original bill have not, nor has either of them, any title to the premises mentioned and described in their said bill, nor in any part or parcel thereof.

2. That the children of the said testator, Jacob Dawson, have not, nor has said L. C. Burr, nor any person or party claiming under or through him, nor has either of said parties at any time done, committed, or suffered any act or thing whereby they or any or
747 either of them is or ought to be estopped to assert title to said premises against the said plaintiffs or any or either of them.

3. That the said Ezekiel Giles is seized in fee of the said premises, and all thereof, and is entitled to be quieted of his title therein as against said plaintiffs in said original bill. It is therefore ordered, adjudged, and decreed as follows:

1. That the original bill be, and the same is hereby, dismissed out of this court, with costs to be taxed.

2. That it be, and is hereby, declared that by the true construction of the last will and testament of the said Jacob Dawson, deceased, his widow, Edith J. Dawson, by and under the same took an estate in the premises in said original bill, and hereafter described, for life, determinable upon her marriage; that having married one Pickering on the 15th day of December, 1879, her estate determined and became vested in said children of said testator, and that by divers conveyances in the pleadings mentioned the title to said premises has come to and now is vested in said Giles.

3. That it is referred to W. R. Kelly, Esq., as a special master, who is hereby appointed for the purpose, to inquire—

1. At what date Mrs. Edith J. Dawson was married to one Pickering.

2. What were the dates respectively of the several deeds made by the children of the testator, Jacob Dawson, to the defendants Burr and Wheeler, and by them to Ezekiel Giles.

3. What are the amount and date of the payment of taxes on the several parcels of land in question in the cross-bill paid by the defendants therein, and each of them, since the remarriage of the widow of the said Jacob Dawson.

4. What are the character and value of the improvements made upon the premises in question in the said cross-bill, and the time each improvement was made, with a particular description
748 thereof, from the time of the death of the said testator, Jacob Dawson, to the filing of the cross-bill.

5. What were the rental value and also the rents actually received by each defendant in said cross-bill, and of the receiver, of each and every several part and parcel of the improvements made by him or her since the remarriage of the said Edith J. to this day, stating the same with the respect of the property as if the same were unimproved and also improved, as he shall find the same.

6. What are the rights of the claimants and Giles under the occupying claimant law, if any, and also under the rules of equity.

The master shall consider the testimony already taken upon the above questions, and now on file in this cause, and shall receive such other and further testimony thereon as the several respective parties may offer. The testimony in behalf of the occupying claimants shall be taken within 20 days, and that of Giles within 35 days, from the date hereof.

IV. All questions as to the rights of the defendants in said cross-bill to the benefit of the occupying claimant law of this State, together with all other questions not herein determined, are hereby reserved until the coming of the report of the master aforesaid.

V. The sum of — dollars is hereby allowed to the said guardian *ad litem* of said infants, Minnie S. and Carlton Dawson, the same to be taxed as costs in the cause, and it is ordered that the costs in the original suit to be taxed by the clerk be recovered by the defendants therein against the plaintiffs therein, and the costs in the cross-suit be recovered by the said Giles against the defendants therein.

The premises in question in the original bill are described as follows:

Nineteen feet and five and one-half inches off of lots five and six, in block fifty-four, in the city of Lincoln, State of Nebraska,
749 according to the recorded plat, described more fully as eighteen feet and nine and one-half inches off of the west side of lot five and eight inches off of the east side of lot six, in the center of said block, commencing at the center of the west wall of the building once belonging to Lindus Cody, and running due west nineteen feet five and one-half inches to or near the center wall of the building claimed by S. W. Little next west, which is now in the possession of the plaintiffs, Owen and Oakley.

Also lot six, in block fifty-four, except eight inches off the east side

thereof, in the possession of the said plaintiff Little; also a portion of lots four and five, in the possession of Martha Alexander; also a portion of lots three and four, in the possession of said plaintiff Stewart; also the following lots in Dawson's addition to South Lincoln: Lots one, two, five, six, seven, eight, nine, ten, eleven, and twelve, in block twenty-nine; block thirty-two; block thirty-four; block thirty-one; block thirty-three; lots three and four, in block thirty-five; lots five, six, seven, and eight, in block thirty-six; block thirty-seven; block thirty-eight; block thirty-nine; lots one, two, three, four, five, and six, in block forty; block forty-one; block forty-two; block forty-three; block forty-four; block forty-five; block forty-six; block forty-seven; lots three, four, ten, eleven, and twelve, in block forty-eight; block forty-nine; also the southeast quarter of section thirty-five, township ten, range six, and the west half of the southeast quarter of section nineteen, in township ten, range seven, in said county.

And the premises in question in the cross-bill are described as follows:

750 The west half of the southeast quarter of section nineteen, town. ten, range seven, and the east half of the northeast quarter and the southeast quarter of the southeast quarter of section thirty-five, in township ten north, of range six east, in said county; and lots three, four, five, and six, in block fifty-four, in the city of Lincoln.

And also divers other premises described in the memorandum hereto annexed, marked "A." Against the description of each several parcels of land appears the name of the defendant in said cross-bill claiming the same, and against whom this decree is rendered.

And it is further ordered, that the injunction allowed by the judge of the district court of the State of Nebraska, whence said original bill was removed into this court, be, and the same is hereby, dissolved.

Memorandum hereinbefore referred to of the premises affected by the provisions of this decree, so far as the same are involved in the cross-bill, together with the names of the parties claiming the same.

No. 1. Owen & Oakley, 18 feet and 9½ inches off west side of lot 5 and eight inches off east side lot six, block fifty-four, Lincoln.

No. 2. S. W. Little, lot 6, block 54, except 8 inches off east side thereof, Lincoln.

No. 3. Martha Alexander, 15.63 feet off west side lot four and 6.25 feet off east side lot five, block fifty-four, Lincoln.

No. 4. A. P. S. Stewart, west half of lot three and 9.31 feet off the east side lot four, block fifty-four, Lincoln.

No. 5. Samuel G. Owen, lot four, block 31, Dawson's addition to South Lincoln.

No. 6. D. B. Alexander, lot three, block 31, Dawson's addition to South Lincoln.

No. 7. Sarah J. Purcell, lot 3, block 33, Dawson's addition to South Lincoln.

751 No. 8. Alexander C. Huestes, lots 5, 6, 7, 8, block 36, Dawson's addition to South Lincoln

No. 9. Charles D. C. Huestes, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, block thirty-seven, Dawson's addition to South Lincoln.

No. 10. Samuel Aughey, lots 7, 8, 9, block 31, Dawson's addition to South Lincoln.

No. 11. Jacob Freedman, lots 7, 8, block 31, Dawson's addition to South Lincoln.

Jacob Freedman, lots 11, 12, block 47, Dawson's addition to South Lincoln.

No. 12. O. P. Austin, lot 6, block 38, Dawson's addition to South Lincoln.

No. 13. Sarah A. Gable, lots 1, 2, 3, block 38, Dawson's addition to South Lincoln.

No. 14. Clarinda A. Bumstead, all block 39, Dawson's addition to South Lincoln.

No. 15. Martha A. Snowden, lots 1, 2, 3, 4, 5, 6, block 40, Dawson's addition to South Lincoln.

No. 16. Charles C. Snowden, lots 1, 2, 3, 9, 10, 11, 12, block 42, Dawson's addition to South Lincoln.

No. 17. —— ——, lots 7, 8, 9, block 47, Dawson's addition to South Lincoln.

No. 18. Thomas Woods, lots 7, 8, 9, 10, 11, 12, block 41, Dawson's addition to South Lincoln.

No. 19. John H. Schwabold, lot 10, block 32, Dawson's addition to South Lincoln.

No. 20. Samuel Henderson, lots 5, 6, block 32, Dawson's addition to South Lincoln.

No. 22. M. B. Cheeney, lots 1, 7, 2, block 32, Dawson's addition to South Lincoln.

No. 23. Mary E. Maloney, lot 4, block 44, Dawson's addition to South Lincoln.

752 No. 24. Henry S. Gordon, ex't'r, &c., all of block 46, Dawson's addition to South Lincoln.

No. 25. Guy C. Barnum, lots 3, 4, block 47, Dawson's addition to South Lincoln.

No. 26. Roda A. Prindle, lots 5, 6, block 49, Dawson's addition to South Lincoln.

No. 27. Mary A. McSweeney, lot 1, block 33, Dawson's addition to South Lincoln.

No. 28. Charles Hanna, lot 9, block 37, Dawson's addition to South Lincoln.

No. 29. W. J. Van Dorn,
No. 30. G. W. Lashus, } S. E. ¼ sec. 35, T. 10, R. 6 east.

No. 31. George Warden,
No. 32. Samuel Arthur,
No. 33. H. O. Snow,
No. 34. Allen W. Hawley, } W. ½ S. E. ¼ sec. 19, T. 10, R. 7 east, each claiming a separate part thereof of ten acres each, except said Hawley, who claimed fifty acres thereof

If either party so desires, the master may take proof and report

present value of the premises in dispute, exclusive of the improvements found thereon.

(S'g'd) ELMER S. DUNDY, *Judge.*

Thereupon afterwards, at the May adjourned term of said court, on the 17th day of October, 1883, the following proceedings were had, as appears of record on folio 784 [of] Journal "H" of said court, to wit:

Appeal Allowed from Decree Dismissing Bill.

S. W. LITTLE *et al.*
vs.
EZEKIEL GILES *et al.* } No. 202, F.

Now, on this day, come the complainants herein, by their solicitor, W. J. Lamb, and in open court pray an appeal to the U. S. Supreme Court from the decree dismissing complainants' bill of complaint; and the court, being fully advised in the premises, doth now, on this day, order that said appeal be, and the same is hereby, allowed.

753 In the Circuit Court of the United States for the District of Nebraska.

S. W. LITTLE *et al.*, Complainants,
vs.
EZEKIEL GILES *et al.*, Respondents. } Original Bill.

EZEKIEL GILES *et al.*, Complainants in Cross-bill,
vs.
S. W. LITTLE *et al.*, Respondents in Cross-bill.

Testimony taken before William R. Kelly, a special master appointed by said court, of divers witnesses, at his office, in the city of Lincoln, commencing on Friday, June 29th, 1883.

Present: W. J. Lamb and N. S. Harwood, solicitors of complainants in the original bill and respondents in the cross-bill; L. C. Burr and H. H. Wheeler, solicitors for respondents to the original bill and for complainants in the cross-bill.

The testimony of the following-named witnesses on the part of the complainants in original bill and respondents in said cross-bill was taken and appears as follows:

Name.	Attendance	Pages.
O. B. Webster	June 29, 1883	1, 4–7
D. B. Howard	June 29, 1883	8–11
S. McGoniga	June 29, 1883	12–15
I. S. Ganter	June 29, 1883	16–18
Geo. P. Tucker	June 29, 1883	18–25
J. H. McMurtry	" " "	25–27
J. P. Lutz	" " "	28–29
B. Cox	" " "	30–32
W. S. Latta	" " "	33–34

	Name.	Attendance.	Pages.
754	J. B. Sweet	June 29, 1883	35–38
	R. R. Tingley	" " "	39–41
	W. W. Holmes	" 30, "	42–43
	C. I. Boggs	" " "	44–45
	S. W. Little	" " "	46–47
	W. G. Van Dorn	" " "	47–48
	A. W. Hawley	" " "	49–51
	L. W. Billingsley	" " "	52–54
	Phelelus Peck	" " "	55
	Frank P. Phelps	July 2, 1883	55–60
	W. G. Van Dorn	" " "	60–62
	Wm. M. Clark	" " "	62–63
	L. W. Billingsley	July 3, 1883	65–69
	J. H. McMurtry	Stipulated	70
	T. S. Ganter	"	70
	William Barr	July 3, 1883	70–71
	D. W. Mosely	" " "	71–72
	J. W. Boggs	" " "	72–73

O. W. WEBSTER, a witness on behalf of said S. W. Little *et al.*, complainants and respondents as aforesaid, being first duly sworn, was examined in chief by Mr. W. J. LAMB, and deposes and says as follows:

My name is O. W. Webster; I reside at Lincoln Nebraska, and have resided here for about 14 years; I am in the boot and shoe business; I have carried on my business for the last 12 years in rented business houses.

Q. State whether or not you have bought and sold some property since your residence here and whether or not you are acquainted somewhat with the value of real estate in the city of Lincoln.

Objected to as incompetent. Objection overruled.

755 Answer. I have bought and sold some property and am somewhat acquainted with the value of property in said city.

Question. You may state *in* what, in your opinion, is the present value of the brick buildings on "O" St., fronting the Government square occupied by Redford, J. B. Trickey & Co., William J. Turner, and David May.

Objected to, for the reason that the value of the several pieces of property has been proven and is now a matter of record in this case; that it is incompent, immaterial, and irrelevant, and because contrary to the true meaning of the order of reference.

Ans. I think the same answer will apply to the Redford & Trickey buildings. They were built about the same time, or, at the same time, I should think the buildings on each lot were worth $4,000.00. That is as to the Redford and Trickey buildings each. The Turner building was built later. I would make the price of that the same as the other, say $4,000.00; the May building, $5,000.

Cross-examined:

[Q.] What is the depth & width of the May building?

A. I don't know that I could give it exactly. I think it is 90 feet deep, and the width from 22 to 25 feet. The full lot, if it is occupied, I think, is 25 feet.

Question. What is the height of it?

A. Cannot tell; it is a — story building.

Question. How many perch of stone in the foundation walls?

756 Answer. I don't know.

Question. State the number of yards of plastering and the number of yards of paneling there is in the building.

A. I don't know either——

Question. What is the value of stone by the perch laid in the wall?

A. It varies a little from $2.40 to $2.50 per perch in the wall.

Question. How many thousand brick are there in the May building?

A. I don't know.

Question. What is the value of brick laid in the wall?

A. $10.00 per thousand.

Question. What is the value of plastering by the yard?

A. From 22 to 25 cents per yard.

Question. How do you know?

A. From contracts that I made this spring. I built a frame house. I know the price it was when the Redford [and] Trickey buildings were built; that was from 33 to 35 cents per yard.

Question. What building was it you built? Describe all the buildings you have built in Lincoln.

A. The first was a house in Capital addition on lot 10, b'k 3; the next was on lot 3, b'k 90, in Lincoln; the next was on lot 7, block 64, an addition; the next was a brick house where I live on lot 11, b'k 122; two houses in lot 6, b'k 24; two small houses on lot 7, b'k 87, and one or two other little ones. That is all the houses I have built; I built these all within 11 years.

757 Question. Give a detailed statement of the size of each of these stores; their height, length, width; the number of yards of plastering and paneling, with the values of the front and the roof; the number of brick in each wall, the number of perch in each wall, and the values thereof.

Answer. I could not give these details without going and measuring. The buildings are all two-story brick buildings, and either 70 or 80 feet deep; in the neighborhood of that depth, and in the neighborhood of being on full lots, which would be 25 feet. I think they are fractional lots.

Question. The Redford & Trickey buildings are of the same length, are they not?

A. I think they are.

Signing of deposition waived by parties.

Costs:

Deposition, 6 folios	$1 20
Swearing 1 witness	10
Witness fee	$1 50

Paid by W. J. Lamb, sol.

D. B. HOWARD, a witness on behalf of said Little *et al.*, complainants and respondents, being first duly sworn, was examined in chief by Mr. W. J. LAMB, and deposes and says as follows:

I am a resident of the city of Lincoln; have resided here 9 years, and for 7 years have been contracting and building.

Question. What contracts and buildings have you had this season?

A. Have at present the contract of the brick block of Hovey & Peck on North 10th St., besides some other residence buildings in the city.

758 Q. You may state whether or not you have looked over the brick buildings occupied by Redford, Trickey & Co, W. J. Turner, and David May on "O" St., in Lincoln, Neb.

A. I have.

Question. State what, in your opinion, each of those buildings are worth.

Objected to as incompetent. Objection overruled and exceptions noted.

A. Judging from what materials are worth at the present time, I think the first three buildings are worth $4,000.00 each. The one occupied by David May I placed at $5,000.00.

Cross-examined by L. C. BURR for Giles *et al.*:

Question. Give a detailed estimate and statement of the length, breadth, and height of each of these buildings. Give the number of perch of stone in the walls of the foundations and cellars; give the number of brick in each building; the number of yards of plastering and paint, together with the value of the front and roof of each of these buildings.

Answer. I will ask some time to make this answer. I could not give an intelligible answer without further time.

Question. Are you acquainted with Artemus Roberts and M. L. Hiltner, witnesses, who have testified in this case?

Objected to as not a proper cross-examination.

Ans. Yes, sir.

Question. Are these 2 persons competent, in your opinion, to make a detailed estimate and value of the several buildings mentioned by you?

Objected as not proper cross-examination. Objection sustained and exceptions allowed.

759 Q. If Mr. Roberts and Mr. Hiltner have in this case sworn to a detailed estimate of the Trickey building mentioned by you, each of them testifying to all of the several parts of that build-

ing, and found its value to be less than $2,700.00, would you not now testify that you are mistaken in placing the value of the same building at $4,000.00.

Objected to as not proper cross-examination, incompetent, immaterial, irrelevant, and that their estimates, if any they made, have not been shown to the witness so he knows anything about their estimates. Objection overruled & exception allowed.

A. My answer is no; not until I had made an estimate of my own.

Q. Then your testimony is that your mere guess at the value of these buildings, in your opinion, is better than the detailed estimates and values of the two architects spoken of?

Objected to as not proper cross-examination and as assuming that as testified to which has not been. Obj. overruled and exception allowed.

Ans. I do not aim to so testify. I do not know that these architects have made such an estimate.

Question. If they have made such an estimate, what is your testimony?

A. I would like to know whether it was separate or joint estimate.

Question. You may assume that they made separate estimates and that each of them placed the value of the Trickey building at less than $2,700.00.

760 Objected to as not proper cross-examination, because any estimate they have made has not been shown the witness, as hypercritical, incompetent, immaterial. Overruled and exception.

A. My answer would be that I don't believe the building could be built for that to-day.

WITNESS asks: Do you want I should give a detailed estimate?

Answer. I do not, at my expense.

D. B. HOWARD.

Fees:

Deposition, 6 folios	$1 20
Swear witness	10
Witness fees	1 50

Paid by W. J. Lamb.

STEWART MCCONAGA, on behalf of same parties, being first duly sworn, was examined in chief by LAMB, and deposed and swears as follows:

Stewart McConiga; I am a resident of the city of Lincoln, and have resided here for 15 years; since that time I have been in land and real estate business; was register of the land office down to 1871; since then have been in the real estate business. I think I am acquainted with the value of real estate in Lincoln and vicinity.

[Q.] State whether or not you are acquainted with the brick buildings fronting on "O" St., in the city of Lincoln, occupied

respectively by Redford, Trickey & Co., W. J. Turner, and David May.

Answer. I am.

Q. State what, in your opinion, is the fair value of those buildings.

Objected to as incompetent.

761 Ans. I would put the Redford building at $4,000.00; Trickey, $3,700.00; the Turner building, $4,000.00; the May building, at $5,000.00.

Q. State what, in your opinion, would be the fair annual rental value of each of these from Dec. 15, 1879, to June 14, 1883, without the buildings, for the purposes for which they are now used.

Objected to as incompetent, immaterial, and irrelevant. Objection overruled & exception allowed.

A. Assuming that those lots were uimproved—the building on them would of course raise the value of the location for business—but assuming them to be unimproved, I would place the rental value of the lots at $200.00 per year for that time.

Cross-examination by L. C. BURR for GILES *et al.:*

Question. Give a detailed estimate and value of the length, breadth, and height of each of these buildings; give the number of perch of stone in the foundation walls and cellars; give the number of brick in each wall; the number of yards of plastering and paint; describe each front and the roof of each, together with the values thereof, if you can.

Answer. The Redford building is 80 feet width, about 21 feet height, two ordinary stories, first story about 14 or 15 feet, 2nd story probably 12 feet; the Trickey building 60 feet long, about 21 wide, height same as Redford; Turner building is 80 feet long, about 20 wide, same height as the others; May building 100 feet long, 23 wide, each story about 1 foot higher than the others. The balance of the question I cannot answer, but will if Mr. Burr will pay the expense of an expert to make the estimate and ask for further time.

762 Question. What expert do you wish me to hire and pay?

A. I don't care; I can't figure on these things. I base my estimate of the value of the buildings from a different standpoint than an actual measurement of these identical buildings.

Question. State to the court what lots have been leased or rented in this vicinity facing the Government building.

A. I don't know of any.

Redirect by Mr. LAMB:

You may now finish your answer, and state the basis upon which you did go in estimating the value of these buildings.

Object- — as not redirect; that the competency of the witness should have been shown in the direct, and that the witness having shown his incompetency, we ask to strike out all of his testimony, or so much as is incompetent. Objection overruled.

Ans. Since I have been subpœnaed in this case I have talked with parties who have built recently and are now building, and I find that such buildings of similar size cost as much or more as I have estimated on these buildings, and I take it that experience of careful men builders is the best evidence.

Burr now moves to strike out the last evidence of the witness, as well as the whole of it; that it is incompetent, immaterial, & hearsay. Motion overruled. Giles excepts.

S. McGONIGA.

Fees:

Deposition, 7 folios	$1 40
Swearing witness	10
Witness fees	1 50

763 T. S. GANTER, a witness on behalf of said S. W. Little *et al.*' complainants and respondents as above named, being first duly sworn, was examined in chief by Mr. W. J. LAMB, and deposes and says as follows:

T. S. GANTER: I am a resident of the city of Lincoln, and have resided here since May 1st, 1868; during that time my principal business has been dealing in real estate; have bought and sold city property; have built some buildings, and am somewhat acquainted with the values of buildings in the city of Lincoln.

Question. State what, in your opinion, is the value of the brick buildings fronting on "O" St. in Lincoln, Nebr., occupied by Redford, J. B. Trickey & Co., W. J. Turner, & David May.

Objected to as incompetent. Objection overruled, & exception.

A. The Redford building—let me see; I had a memorandum, a diagram, and I had put my figures down; I have not that here; let me see; one is shorter than the others; I think that is the Trickey building; I put the size down; I have some recollection of it, though; I think it is worth $4,000.00; I put one up of that size; that is what it cost me—that is, paying for half the wall on each side. Trickey's is worth less—say $3,500.00. Turner's is worth about, say, $4,000.00. May's is worth—that is 100 feet; that is worth more than $5,000.00—that is, as the building stands now; if I was to build a building and wait 6 months I would call it less. I estimate the buildings as now ready for occupancy or occupied & drawing rent from it.

Question. What, in your opinion, would be a fair rental value for each of these lots without any buildings upon them from Dec. 15, 1879, down to now per annum.

764 Answer. I could not answer that without getting some information from the master.

Question. What would be a fair annual rental value for each of those lots from Dec. 15, 1879, for the uses to which they were put to sustain these buildings on them, and also what would they be worth upon a short lease, beginning Dec. 15, 1879, and ending now? Explain the whole matter.

Giles objects as incompetent, immaterial, and irrelevant. Objection overruled, and exception.

A. I will answer the last question. It depends on consideration of the lease—whether a long lease or a short lease. If the party will lease the ground to pay the taxes, and keep up sidewalks, the 3 first ones would be worth $175.00 per year, and Mr. Little's would be worth $200 per year. I understand Little's is a 25-foot lot; the others not so wide.

Cross-examined by L. C. BURR for Giles:

Question. If you can, give a detailed statement and estimate of the size of each of these buildings, length, breadth, height, number of perch of rock in foundation walls; the number of brick, number of yards of paint and plastering. Describe the fronts, roofs, floors, with the values.

A. I could not; I only take it from my experience of buildings of that size; I only put an approximate estimate of size; one may be a foot or so higher.

Question. What lots, & describe it, have been leased in the vicinity of the Government square.

A. Not any in that year; none to my recollection.

T. S. GANTER.

Fees:

	Depositions, 6 folios	$1 20
765	Swearing witness	10
	Witness fees	1 50

GEORGE P. TUCKER, a witness on behalf of the same parties, being first duly sworn, was examined in chief by Mr. LAMB, and deposed and says as follows:

George P. Tucker; *has* resided in Lincoln, Neb., since April 1st 1872; am one of the firm of Tucker & McManigel, real estate dealers, since May, 1878, in Lincoln; have been buying and selling property for others as agents. Before that day I was receiver in the U. S. Land Office for five years and over. I am reasonably acquainted with the value of lands, town lots, and buildings in Lincoln. I, at your request, looked over the buildings occupied by Redford, Trickey, Turner, and May, fronting on "O" street, with a view of estimating their values.

Q. State what, in your opinion, is the present value of each of those buildings.

Objected to as incompetent. Objection overruled & ex.

Ans. The Redford building, I would say, was worth $4,500.00; the Trickey buiding, $4,200.00; Turner building, $4,400.00; May building, $5,000.00.

Question. State what, in your opinion, would be a fair rental value per annum of each of these lots from Dec. 15, 1879, down to now without these buildings on them.

Objection; incompetent, immaterial, and irrelevant, and because this witness has been upon the stand and has testified to the rental

values of the lots and the values of the buildings, and we ask the fees to be taxed to the other side separately.

Ans. I can't conceive that they would be worth anything unless they were used for some purpose.

Question. Had they been vacant during that time what could they have been rented for?

Objection as above.

766 Ans. I think that would depend upon what purpose they were to be used for.

Cross-examined:

Question. You was a witness in this case before and examined by Messrs. Ames & Hall, were you not?

A. I am so informed by Mr. Burr, although it had slipped my memory.

Q. Have the price of brick & building materials and labor advanced since last fall?

A. They are now charging from $2.00 to 2.50 per perch for stone in the wall—that has been done some time before for about 2.00; I got some in an addition to my house for 1.85.

Q. How many perch of stone are there in these buildings?

A. I do not know.

Q. Can you give a detailed statement of all of them or any one of them?

A. I could if I had time to figure it up and take the measurements.

Q. Would you consider yourself to be as good a witness as to values of these buildings as persons in the business of building, such as architects and contractors?

A. That would depend somewhat as to how well posted they were in their business.

Q. Are you acquainted with Artemas Roberts and M. L. Hillner?

A. I have seen them frequently.

Q. Do you know if they—are they competent to examine these buildings and make a detailed statement and estimate of them to ascertain their true values?

767 Objection, [as] not proper cross-examination & incompetent. Objection sustained, and exception.

Q. If they have made a detailed statement under oath in this case of the Trickey building and found its value by a detailed estimate to be less than $2,300.00, whereas you have placed it at $4,200, would you not say that the estimate you now place upon it without a careful detailed examination of the building is erroneous?

Objection, as not proper cross-examination and incompetent; is overruled and Little excepts.

A. I would say that if they estimated the costs of that building at $2,300.00 that they made a mistake.

Q. Then your opinion, in your judgment, is better than their careful detailed estimate of the building?

Objection, as not proper cross-examination. Objection sustained. Exception allowed.

Q. Do you mean to say that your judgment upon merely looking at the premises is a more careful, is a better, value thereof than the measure and rule and figures of competent men?

Objections same as above.

Ans. I do not think it would be better than the correct figures of competent men.

Question. How long has Artemas Roberts been an architect in this community?

Objection, as not proper cross-examination. Objection sustained. Exception.

Q. How long has M. L. Hiltner been a contractor and builder in this city?

Objection, as incompetent and not a proper cross-examination. Sustained. Giles excepts.

768 Q. If Mr. Hiltner and Mr. Roberts both, after careful examination and figuring, have found the true value of the Trickey building to be less than $2,300.00, would you still insist that your opinion, based upon a simple view, was the better valuation of that building?

Same objection as above.

A. Not knowing whether their estimate and examination was careful and correct, I would hold to my opinion as to a building of that dimension in preference to taking theirs, without first making an examination for myself and look[ing] over the figures.

Q. Do you know whether the floors have been lowered from 3 to 4 feet in 3 of these buildings?

A. I could not say as to the amounts.

Q. If it was needed to lower the floors to bring it down to grade, and a good job was done, I suppose it would be better; if a poor one, it would be worse.

Q. How long, in your opinion, would these brick buildings last?

A. That would depend—well, as long as they are kept in good repair.

Q. You know that these buildings have been kept in good repair for the last three or 4 years?

A. Reasonably so for property that has been in litigation during that time. I could not give you any statement as to repairs on them—may or may not have been.

Q. What reasonable repairs have you reference to?

A. I can't itemize them; I speak from their general appearance and from going into them. They have been occupied for that time by a good class of business—clothing, drugs, jewelry, boots & shoes.

They must have been reasonably kept or they would not have been occupied.

769 Q. When they lowered the floors to 3 of these buildings did they also lower the cellars?

A. I don't think I was ever in the cellars; I cannot answer this question.

Q. Will you swear that the foundations to the 3 east buildings are in good, solid, and substantial shape now?

A. I could not well swear to that when I have just sworn to the fact that I have not been in the cellar, to my knowledge.

Q. You testified before in this case, did you not?

A. If so the record will show it.

Q. State your best recollection, please.

Objection as incompetent; not proper cross-examination. Overruled, & ex.

A. I could not say whether the cases are the same or not, the titles of them. I have testified as to some of this property, I think.

Q. Did you not then swear that the value of the Redford building was only $3,800.00.

Objected to as not proper cross-examination.

Ans. Whatever I swore to at that time was in accordance with my judgment as to its value at that time. I have no recollection at this moment as to what value I then put upon it.

Q. You have sold some of the property that has passed under this Dawson will, giving a warranty deed therefor, have you not?

A. I think we have sold some that was purchased through L. C. Burr as the att'y of Mrs. Dawson.

Q. And if Giles is successful in this suit you will be liable upon that warranty, would you not?

Objection sustained.

GEO. P. TUCKER.

770 Fees:

Depositions, 12 folios	$2 40
Swearing witness	10
Witness fees	1 50

J. H. McMURTRY, a witness on behalf of said S. W. Little *et al.*, being first duly sworn, was examined in chief by Mr. W. J. LAMB, and deposes and says as follows:

J. H. McMurtry; reside in the city of Lincoln, and have resided here since 1871, and since that time I have been engaged in dealing in real estate, buying and selling the same for self and others; am acquainted with the values of Lincoln lots and buildings; have bought and sold buildings, but am not a builder.

Question. State what, in your opinion, is the value of each of the buildings fronting on "O" St. in Lincoln, occupied by Redford, Trickey, Turner, and May, without the lots.

Obj. [to] as incompetent, immaterial, and irrelevant. Overruled, & exception.

A. From $4,000.00 to $5,000.00 each, the May building being the best one.

Q. State what, in your opinion, would be a fair rental value per annum of those lots each from Dec. 15, 1879, to now without the buildings.

Obj. to [as] incompetent, immaterial, and irrelevant for the reason that this witness has already been on the stand and testified as to the value of the lots & buildings, and that his evidence now appears of record in this case. Obj. overruled, & exception.

A. That is a hard question. It is in the fire limits; there could be no real value, rental value, from year to year; the only thing you could put up there would be a bill-board to get passes to a circus.

Q. What, in your opinion, would be a fair rental value per
771 annum for the same each during that time for the purposes for which they were used, sustaining these buildings on them?

Objection as last above. Same ruling & exception.

A. In the neighborhood of $200.00 each.

Cross-examination by L. C BURR:

Q. Give, if you can, a detailed estimate of each building, with its length, height, and breadth; the number of perch of stone in the buildings; the number of brick, and the number of yards of plastering and painting, with a description of the front, roof, and floors, with their several values.

A. I am not a builder; I could not do it.

Q. Do you know of any premises of like character, business property, that rented for $200.00 in this city around the P. O. square, or south of the P. O. square?

A. Ground lease east of square? Yes. In block east of P. O. sq. rents are higher there, perhaps, than in the block south of P. O. square; I knew of the Sweet lease on corner of 11th and O streets.

Q. What property do you speak of east side of square?

A. Nothing on east side of square, but in that block.

J. H. McMURTRY.

Fees:

Depositions, 4 folios	80
Swearing witness	10
Witness fees	$1 50

J. P. LAUTZ, a witness on behalf of said S. W. Little *et al.*, being first duly sworn, was examined in chief by W. J. Lamb, and deposes and says as follows:

My name is J. P. Lautz; I reside in Lincoln, Nebr.; have resided here for 15 years; during that time I have been dealing in real estate, and am acquainted with value of real estate and buildings in Lincoln and vicinity.

772 State, if you know, what is the value of the 4 brick buildings fronting on O street and occupied respectively by Redford, Trickey, Turner, & D. May.

Objected to by Giles as incompetent.

A. I think the buildings are worth $17,000.00—the Redford & May buildings, $4,500 each; the Trickey and Turner buildings, $4,000.00 each.

Q. What, in your opinion, would be a fair rental value each of those 4 lots for the purpose of sustaining these buildings from Dec. 15, 1879, until now? How much per annum?

Objected to by Giles, and incompetent, immaterial, and irrelevant. Objection overruled & Giles excepts.

A. I don't know that I understand. The vacant lots would not be worth anything for the purpose of the buildings, as the costs of the buildings would not be equaled by the probable rents for that time. The lot rent alone ought to be about $200.00 per annum for the purpose of the buildings now there.

Cross-examined by L. C. BURR:

Q. Give a detailed estimate, if you can, of each building, its size, length, breadth, and height; the number of perch of stone in the foundation walls, the No. of brick in the walls, the No. of yards of plastering and paneling in the building; a description of the roof and floors and the fronts of the buildings, with their respective values.

A. I can't answer that definitely as to the amount of materials. They are about 60 to 80 feet in length and about 20 feet in breadth. I stepped the ground.

Q. State what ground has been rented in the vicinity of these buildings as put to you in your question in this examination, if you know of any, south of the P. O. square on O street.

A. I don't know of any leasing in that vicinty.

J. P. LAUTZ.

773 Fees:

Deposition, 4 folios	$0 80
Swearing witness	10
Witness fees	1 50

BARTHOLOMEW COX, a witness on behalf of said S. W. Little *et al.*, complainants and respondents as above, being first duly sworn, was examined in chief by Mr. LAMB, and deposes and says as follows:

My name is Bartholomew Cox; I am a real estate agent; reside in Lincoln, Nebr.; have lived here 10 or 12 years; office south of P. O. square; have been in real estate business in this city for 7 or 8 years; know something about the values of real estate and buildings in the city of Lincoln.

Q. State how much more, in your opinion, is the real estate south of P. O. building, in Lincoln, known as the Redford building,

Trickey, Turner, and May buildings, worth than it would be without those buildings; or, in other words, what is each of those buildings worth standing there?

Giles objects as incompetent, immaterial, & irrelevant. Objection overruled and exception noted.

A. I would say the Dave May building [is] worth $5,000.00; the Turner building, $4,500.00; the Trickey building is worth about $4,000.00; the Redford building, $4,500.00.

Q. State what, in your opinion, would be a fair rental value per annum, since Dec. 15, 1879, down to now, for each of these lots without the buildings.

Giles objects [as] incompetent, immaterial, and irrelevant. Objection overruled, and Giles excepts.

A. It would not be worth anything for that length of time to put a building on in the fire limits.

Q. What, in your opinion, would be a fair rental value for each of these lots for these buildings that have stood upon them?

774 Giles objects same as last. Same ruling & ex.

A. Should think about $200.00 per year each.

Cross-examined.

[Q.] State, if you can, a detailed estimate of these buildings and give their length, width, and height; the No. of perch of stone; the No. of brick in each width; No. of yards of plastering and paint. Describe the fronts, floors, and roof, with the values of each.

A. I can tell about the length of the buildings; can guess as to the height. The May building is about 100 feet deep and about 36 feet high; Turner building about 80 feet deep, & Trickey building about 55 feet deep; the Redford building is about 80 feet deep. They are all about the same height. I cannot answer the remainder of the question. I am not a practical builder.

Q. Do you know of any other store buildings situated on the south side of P. O. square—in respect to its title I mean?

A. No, sir.

Q. Do you know of any other lots on the south side of P. O. square renting from year to year?

A. I do not.

Q. If the Redford store rented (the whole building) for $1,500.00 per annum, your judgment is that $1,300.00 per annum would be earned by the building and $200.00 by the ground?

A. The way the question was asked is what the ground was worth with the buildings on, but I believe I would not change the answer any.

B. COX.

Fees:

Depositions, 5 folios	1 00
Swearing witnesses	10
Witness fees	1 50

775 W. S. LATTA, a witness on behalf of said S. W. Little *et al.*, complainants, &c., being first duly sworn, was examined in chief by Mr. LAMB, and deposes and says as follows:

My name is W. S. Latta; I reside at Lincoln, Neb., and have lived in Nebraska 25 years; in Lincoln 10 years; have dealt some for others in real estate here; have built some buildings; am acquainted with the value of real estate and buildings in the city of Lincoln; have built some buildings more before I came here; have had charge of property, business, and dwellings for renting. I know the property on O street occupied by Redford, Trickey, Turner, and D. May since 1879.

Q. You may state what, in your opinion, is the value of each of those stores, the ones occupied by Redford, Trickey, Turner, & May, the buildings aside from the lots—in other words, how much do the buildings enhance the value of these several lots?

Giles objects as incompetent, immaterial, and irrelevant. Objection overruled & exception.

A. In my opinion the building occupied by May is worth $5,000.00; the one occupied by Turner about $4,500.00; that occupied by Trickey about $3,500.00; the one occupied by Redford about $4,500.00.

Cross-examination:

Q. Give a detailed estimate of each of these several buildings, their length, breadth, height; give the number of perch of stone in each building; the No. of brick in each building, together with the No. of yards of paneling and plastering, together with a description of the fronts, floors, and roof, and the values of the respective parts thereof.

A. I can figure this out accurately if necessary; I have not done so, though; there is about 200 perch of stone in the
776 basement of the May building; the walls are about 30 feet high from the basement up; the length of the May building [is] 105 feet; breadth, about 22 feet; Turner building is about 85 feet by 20 feet, about; Trickey building is about 60 or 65 feet by about 22 feet; Redford building is about 85 feet by about 20 feet to 22; the lots are fractional. I have not made any detailed estimate of the material in the several buildings, but can do so if desired.

W. S. LATTA.

Fees:

Depositions, 3 folios	60
Swearing witness	10
Witness fees	1 50

J. B. SWEET, a witness on behalf of said S. W. Little *et al.*, complainants, &c., being first duly sworn, was examined in chief by Mr. LAMB, and deposes and says:

My name is J. B. Sweet; I am a resident of the city of Lincoln; resided here about three years; am an attorney, and have been handling real estate; I am acquainted with the value of city and country

property in and about the city of Lincoln; have been present in Lincoln since I have been a resident most of the time.

Q. You may state whether you have been acquainted with the buildings fronting on O street occupied by Redford, Trickey, Turner, & May.

A. I am acquainted with them.

Q. State what, in your opinion, these several buildings are worth; or, in other words, how much is each of the said lots worth more by reason of the several *lots* being upon them than if they were vacant lots.

Giles objects as incompetent, immaterial, & irrelevant.

A. The Trickey building I should say was worth $4,000.00; the Redford & Turner buildings, $4,500.00 each; the May building, $5,000.00.

777 Q. What, in your opinion, would be a fair annual rental value for these lots without the buildings, from Dec. 15, 1879, down to now?

Giles objects as incompetent, irrelevant, and immaterial, and that the question covers a time when the witness was not here and could not know.

A. It was worth, I should say, $175.00 each.

Cross-examination:

Q. How do you put the value on real estate before you was ever acquainted with it?

A. I don't know that I ever did.

Q. What is your age?

A. I am 33 years of age.

Q. You have been in Lincoln for — last three years attending to business?

A. I have.

Q. What real estate have you sold? Name the parties.

A. Do you mean farm land or city property?

Q. Name it all.

A. It would be impossible to name it all. I will name all I can think of; I can't name it all. I bought a farm in Elk Creek precinct and sold it to two men from Ill's—brothers, can't give their names—for $3,000.00; bought a house & lot on "S" near 14th and sold it to Mrs. Conley: I bought 2 lots corner D and 16, and sold them—can't remember the parties' names; bought a house & lot on E street, which I sold to Samuel English about 2 months ago. I sold a lot a few days ago to Wm. Hackney. I bought a house of W. Queen—sold it last fall—on 11 & J Sts.

Q. Give a detailed estimate of the 4 buildings you swear you are acquainted with; give their height, length, & breadth; No. of

778 perch of stone in the stone foundations; the No. of brick in the walls; the No. of yards of painting and plastering. Describe the roofs, floors, and fronts, with their respective values.

A. I never examined the buildings so as to be able to answer the

question in detail, but they are all 2-story buildings, glass fronts. The May building, I think, is 25 by 90 or 100 feet. The Trickey building, I think, is 20x60. The other 2, I think, are about 20x80. I never measured the perch of stone in the foundation nor counted the brick in the wall.

Q. Have you not been engaged almost exclusively in other business besides law and real estate since you have been here?

A. No, sir.

Q. Have you not been in partnership with a physician here in Lincoln?

A. No, sir.

Q. Have you not been engaged in the business of advertising and the sale of some kind of a preventative of conception for the past two years?

Objected to as not proper cross-examination. Objection sustained. Exception.

JOHN B. SWEET.

Fees:

Deposition, 6 folios	$1 20
Swearing witness	10
Witness fees	1 50

REUBEN R. TINGLEY, a witness on behalf of the complainants, &c.' S. W. Little, *et al.*, being first duly sworn, was examined in chief by Mr. Lamb, and deposes and says as follows:

R. R. TINGLEY; reside in Lancaster, adjoining Lincoln; have resided in the — from 1868; to 1879 since then, except 1 year about 1½ miles east of the P. O. During that time I have been acquainted with the value of real property and buildings in Lincoln; have
779 dealt in it, and have a fair sense of its value; have had built some 2 brick buildings in the city on "O" St., lots 16 & 17, b'k 42, the block east of P. O. square. I know the property occupied by Dave May, Turner, Trickey, & Redford; have known it for years.

Q. State what, in your opinion, is a fair value of each of these buildings, standing where they do; or, in other words, of how much more value are those several lots with the buildings on them than they would be without the buildings?

Objection [as] incompetent, immaterial, irrelevant.

A. I have been looking over the buildings; am pretty well acquainted with them. The Trickey building, I think, is worth from $4,700 to $4,800.00; the next two are worth $5,000.00 each; the next one is worth $5,500.00—the May building. The property is worth with buildings $100.00 each per month more than it would be without the buildings on, until buildings could be erected.

Q. What, in your opinion, would be a fair rental value of each of those lots from Dec. 15, 1879, down to now, without buildings?

Giles objects [as] incompetent, immaterial, & irrelevant. Overruled & exception.

A. It would be difficult for me to answer the question, from the fact that it is in the fire limits and no cheap building could be put on there.

Q. What, in your opinion, would be a fair rental value per annum for each lot for that time for the use of supporting those buildings already on there?

Giles objects as incompetent, immaterial, and irrelevant. Overruled & exception.

780 A. I should suppose it was worth to the land-holder about $300.00, besides taxes; that is my opinion, not supposition.

Cross-examination:

[Q.] Give a detailed statement of these buildings, the length, width, and height of them. Give the No. of bricks in the wall, the No. of perch in the foundation, the No. of yards of plastering and paneling. Describe the floors and the roof and the values of their several parts.

A. I should want about two days to answer the question. I could answer it by measuring and figuring; have not made any measurements, except the Trickey building, which is 60 feet. I have no recollection of ever being in the cellar; was there when the buildings were erected. I think they were built from 1873 to 1878, but won't be sure as to the date. The 3 east buildings were built by Cody, I think; do not know whether the foundations to this building are in good shape or not.

R. R. TINGLEY.

Fees:

Depositions, 4 folios	80
Swearing witness	10
Witness fees	1 50

The further hearing of witnesses is, by consent of parties, adjourned until Saturday morning, June 30, 1883.

WM. R. KELLY,
Sp. Master.

SATURDAY, *June* 30, 1883.

Appearances as before.

W. W. HOLMES, a witness on behalf of said S. W. Little *et al.*, complainants, &c., being first duly sworn, was examined in chief by Mr. LAMB, and deposes and says as follows:

My name is W. W. Holmes; I reside in Lincoln, Neb.; have lived here since March, 1869. Since that time I have been engaged in the real estate business and loaning money. I have built some buildings in Lincoln—4 or 5 residences and 2 business blocks
781 on 11th St.; am acquainted with the property on O St., south of P. O. square, where Redford, Trickey, Turner, and D. May's stores are.

Q. State what, in your opinion, would be a fair rental value of

each of these lots from Dec. 15, 1879, until now upon a lease for that length of time, and also, upon the other hand, for the actual use they have been put to to sustain the buildings that have stood thereon—answer as annual rental.

Giles objects as incompetent, immaterial, and irrelevant, and because the case was not referred for cumulative evidence; that the record now at Omaha and not before the master will show that the matters of the values of the 4 stores mentioned was fully gone into by Messrs. Harwood and Ames and Deweese & Hall, attorneys for complainants in the original bill, and this witness has already testified upon the same subject. Objection overruled, and Giles excepts.

A. As to the first branch of the question I would say there would be but very little value—say $25.00 per annum each. As to the second branch of the question I would say $200.00 per annum each.

Cross-examined by L. C. BURR for Giles *et al.*:

[Q.] Have you been a witness in this case before?
A. I have.
Q. You testified as to these values before?
A. I don't remember that I did.
Q. What counsel examined you?
A. I think it was Mr. Hall, of Deweese and Hall.
Q. Did he not ask you the value of the use of these lots, and also of the old stone building that was torn down, and of the frame building that was moved away, and of the value of the use of each?

782 A. I remember of testifying as to the value of the old stone building and of the frame building. I do not remember as to the value of the lots, or their use.

L. C. Burr, for Giles *et al.*, now moves to strike out all of the evidence of this witness, because the witness has already testified to the same matters as herein; that this deposition is a mere repetition.

Motion overruled, and Giles excepts.

W. W. HOLMES.

Fees:

Deposition, 6 folios	1 20
Swearing witness	10
Witness fees	1 50

783 Holmes' cross-ex. continued:

[Q.] Assuming that one of these buildings has, since Dec. 15, 1879, brought in a gross rental value of $125 per month, taking the premises as they have stood during that time, state what, in your opinion, the building was worth and the land was worth per month separately.

Objected to as not proper cross-examination, because the assumption is not shown to be correct, nor does it appear what time the

buildings were vacant, nor losses of rents, expenses of collection, deterioration of building by decay, or insurance.

Objection overruled and exception noted.

Answer. If there was no certainty of further occupancy of the buildings it would be hard to say. It is hard to answer, not considering the future, but——

Question withdrawn.

W. W. HOLMES.

784 CHARLES T. BOGGS, a witness on behalf of S. W. Little *et al.*, complainants, &c., being first duly sworn, was examined in chief by Mr. LAMB, and deposes and says as follows:

Giles objects to the examination of the witness because he has been upon the stand and has testified when other counsel were conducting the case and should then have been examined and not put [to] the expense.

My name is Charles T. Boggs; I have been residing at Lincoln, Nebraska, for 13 years. During that [time] I have been engaged in insurance and real estate business and am acquainted with Lincoln city property; I am acquainted with the property fronting on O St. occupied by the Redford, Trickey, Turner, and D. May's stores and ——

Q. State what, in your opinion, would be a fair rental value of each of these lots per annum, beginning with Dec. 15, 1879, and terminating now, without the buildings.

Giles objects as incompetent, immaterial, and irrelevant. Objection overruled & ex.

A. Not to exceed $25.00 or $30.00 per lot per annum.

Q. What, in your opinion, would be a fair, reasonable compensation for the rent or use of these lots, for the uses they have been actually put to to sustain the buildings which have during that time stood thereon, per lot per annum.

A. $150.00 per lot per annum.

Q. Do you know what the taxes are per annum?

A. I do not.

Q. What is the value of the naked lot?

A. From $4,500.00 to $5,000.00.

Q. Do you know of any lots fronting on south side of P. O. square during the times you have been asked about?

785 A. I know of no vacant lots. The lots there have been rented with buildings. I know of such—*i. e.*, the one occupied by Trickey's jewelry store.

Q. How much did that lot rent for?

A. I can't state positively; the lease for the first floor and basement was $65.00 per month

Q. Do you know of any lots being rented with buildings thereon—

the party renting the lots separately from the buildings, in that block?

A. I do not know of any in that block.

CHAS. T. BOGGS.

Fees:

Deposition, folios 4	80
Swearing witness	10
Witness fees	1 50

S. W. LITTLE, a witness on behalf of himself, being first duly sworn, was examined in chief by Mr. LAMB and deposes, and says as follows:

My name is S. W. Little; I reside at Lincoln, Nebraska; have lived here about 12 years; my business has been dealing in grain and milling; I have bought, sold, and rented large amount of Lincoln city property.

Giles now objects to the further examination of this witness as cumulative evidence; that the record now before the master shows that this witness has been on the stand 3 times, and has testified as to when he erected his improvements, how he annually arrived at its value, of that and his other property, and that it is not in accordance with the order of court.

Objection overruled & exceptions allowed.

Q. State what time you erected the buildings and improvements on the premises now occupied by David May.

Question withdrawn.

786 Q. State what to-day is the fair market value of that building now standing upon those premises.

Giles objects; same objection as above written.

Question withdrawn.

Q. What, in your opinion, is a fair rental value of each of the lots occupied respectively by Redford, Trickey, Turner, and D. May, exclusive of the buildings, from Dec. 15, 1879, down to now?

Giles objects; same as before.

Question withdrawn.

S. W. LITTLE.

Fees:

Deposition, 3 folios	60
Swearing witness	10

W. G. VAN DORN, a witness on behalf of the said S. W. Little *et al.*, complainants, &c., being first duly sworn, was examined in chief by Mr. LAMB, and deposes and says as follows:

My name is W. G. Van Dorn; I reside at Lincoln; my age is 76; have lived here since 1871; I am in the nursery business; I knew W. T. Van Dorn and G. W. Lashus, and knew the property they occupy and claim to own—S. E. ¼ S. E. ¼, sec. 35, town. 10, R. 6 E.

Q. Describe to the court with all, particularly all, the property and improvements thereon, and when made. Give a full statement of anything not heretofore described.

Giles objects because on page 119 of record of evidence taken by Examiner Mullon, in answer to Q. 13, the witness has fully stated and answered the same question, and upon his cross-examination, when he described the improvements and placed a value thereon, and that this would be useless and expensive.

Objection sustained as to all matters before testified of.

787 Q. You may state what is the present value of all the trees and other improvements now on said land at this date; when improvements were made.

Giles objects [as] incompetent, immaterial, and irrelevant, leading and suggestive, and for reasons stated in last objection.

A. The value is $800.00. There are 30,000 seedling ash & box elder trees, 2 years old this fall, 10,000 other that run from 2 to 5 years old, and as much as from 2 to 8 feet high. The house was built about 2 years ago. The land I got in 1874 or 1875.

Cross-examined by L. C. BURR for Giles waived.

W. G. VAN DORN.

Giles now asks that testimony of Little and Van Dorn be taxed to Little *et al.*

Fees:

Deposition, 3 folios	60
Swearing witness	10
Witness fees	—

A. W. HAWLEY, a witness of lawful age, introduced by and on behalf of S. W. Little *et al.*, complainants, &c., being first duly sworn, was examined in chief by W. J. LAMB, and deposes and says as follows:

My name is A. W. Hawley; I am the party claiming the property described as the W. ½ S. E. ¼, sec. 19, T. 10, R. 7 E.

Q. Give a detailed description of the improvements on that tract of land—on the 50 acres claimed by you separately—and when made.

Giles objects as incompetent, immaterial, & irrelevant, and that the witness has already testified upon the same subject.

788 A. It is all under plow except, perhaps, ½ acre. There are about 180 apple trees on the land, put out about 1879, 1880, & 1881; 15 early Richmond cherries and a few grape-vines and currants—that is all; these are worth $300.00 for the apple trees. A portion of these improvements were made *under* Mrs. Dawson's days; it would be worth $2.25 to break the land per acre.

Q. What *improvements* are the improvements on the *Snow* 30 acres?

A. Nothing but under cultivation. It is worth $2.25 per acre to break land.

Cross-examination by L. C. BURR:

Q. State the age of these trees.

A. Near one-half of them are 9 to 10 years old. There are 10 early Richmond cherries; are about same age; I never gathered *apples* from them; the trees have bloomed; can't say whether they have born fruit; did not gather the bloom; the cherry trees have born fruit, but I never gathered it—birds took them. This land I have used for general farming purposes—part of the time rented it—have had good and poor crops; have not received much for rents. In 1882 there were 20 acres of corn; I think it went 40 bushels to the acre; it was worth from 25 to 35 cts. per bushel; balance of land put in sorghum; can't tell what that was worth; worth about as much as the corn; poor luck with it. Last year was more than an average crop—not 3 or 4 times above an average. The crop of last year was much better one last year for corn. The land has not been a dead loss; I have not received a great deal from it; I rented
789 it last season—20 acres of it to Dolan—got ⅓ of crop; never have rented it for cash. Geo. has had 40 acres for several years. Small grain crops did not pay as well as corn; 30 acres of wheat did not pay expenses; orchard land rents at ¼. I think $2.00 per acre per annum a fair rental value for the land since I had it; also the Van Dorn land.

A. W. HAWLEY.

Deposition, 4 folios ..... .80
Swearing witness ..... .10

L. W. BILLINGSLEY, a witness on behalf [of] the said S. W. Little *et al.*, being first duly sworn, was examined in chief by Mr. LAMB, and deposes and says as follows:

My name is L. W. Billingsley. Resided at Lincoln for 14 years, about. I am an att'y-at-law. During that time I have bought and sold and speculated in real estate—about 340 pieces of real estate in city and county, and am acquainted with the values of city and country property. I know the property on O street, fronting on P. O. square, where Redford, Trickey, Turner, and D. May's stores are. My office has been within 50 feet to 100 feet of that for 5 years.

[Q.] State what, in your opinion, each of these several buildings standing upon these lots are worth without the lots.

Giles objects as incompetent, immaterial, and irrelevant. Objection overruled & exception allowed.

A. I would put the Redford building at $4,000.00, the Trickey building at $3,200.00, the Turner building at $3,800.00, the May building at $5,000.00.

Q. State what, in your opinion, would be a fair annual rental value for each of these lots from Dec. 15, 1879, to this date, without the buildings.

Giles objects as incompetent, irrelevant, and immaterial.
790 Objection overruled and ex.

A. I would put the rental value per lot at $200 to $250.00 per lot per year.

Cross-examined by L. C. BURR for Giles *et al.*:

Q. Give a detailed statement of each of these buildings, the length, height, & breadth, stating the No. of perch of stone in the foundations, the No. of bricks in the walls, with a description of the front, floors and roofs, with the value of each respective part, if you can.

A. I think I can give the dimensions of the buildings; as to the other, I could do it, but would want 2 or 3 days to do it; will do it if paid for it.

Q. Have you examined the cellars and foundation of any of these buildings?

A. I never was in any of the cellars except in Turner building about a year ago to a fire.

Q. Do you know anything of the foundations of those buildings, as to whether they are good or not, from a personal examination?

A. I can't tell as to the inside walls; the foundations in the rear as I have seen them every day are only in fair condition. The buildings have not been protected for the last 2 years; water has run down and washed out the mortar in the Redford building particularly.

Q. Is it not a fact that the rear or south wall of the D. May building has now started away from the roof and is now from 1 to 2 inches away from the roof of the main part of the building?

Ans. I can't say as to that; I have not noticed it.

Q. What repairs have been done on these buildings since 1879 to your knowledge?

A. I can't say as to that; I don't know.

Q. Do you know of any since the grade was lowered and the floors let down about 3 feet?

791 A. There may have been, but I do not recall it to mind.

Q. Are the buildings in good or bad repair?

A. For buildings of that character and the style of business that is carried on in each; I do not think they are kept in good repair by any means.

Q. What lots do you know of on the S. side of P. O. square, in that block, that have been rented?

A. I know of none within last 10 years.

L. W. BILLINGSLEY.

Fees:

Deposition, 5 folios	1 00
Swearing witness	10
Witness fees	—

PHILEUS PECK, a witness on behalf of S. W. Little, being first

duly sworn, was examined in chief by Mr. LAMB, and deposes and says as follows:

My name is Philetus Peck; I reside at Lincoln and have lived in this county since 1868; have been a farmer; I am acquainted with Mr. Hawley; heard his testimony; have seen the improvements on the premises he has described.

Q. State to the court the aggregate value thereof.

Giles obj[ected] as incompetent, immaterial, and irrelevant. Obj. overruled & ex.

A. The trees are worth in neighborhood of $300.00, would cost that to get them; breaking from $2.00 to $2.50 per acre.

Cross-examination by L. C. BURR waived.

PHILETUS PECK.

Fees:

Deposition, 2 folios		40
Swearing witness		10
Witness fees	1	50

MONDAY, *July* 2*d*, 1883.

Met pursuant to adjournment. Present as before.

792 FRANK P. PHELPS, a witness on behalf of S. W. Little, complainant, &c., being first duly sworn, was examined in chief by Mr. LAMB, and deposes and says as follows:

My name is Frank P. Phelps; I reside near Lincoln, Nebraska; my occupation is that of a farmer; have lived here 3 years; during the year I am gardening on the land adjoining the Van Dorn and Lashus tract.

Q. State whether you are acquainted with the trees growing on S. E. S. E., sec. 35, T. 10, R. 6 E.

A. I am.

Q. State whether you personally examined the trees growing there and made a list of them, and when you did so.

A. I did so yesterday.

Q. Are you acquainted with the value of such property?

A. I am.

Q. State whether you have worked at the business of caring for and selling trees, and if so, how long.

A. I have, for 3 years, for Van Dorn & Co.

Q. Give a statement of the number and kind of trees growing on these premises, and their value.

A. This is a correct list of the different kind and sizes and their values. Witness produces paper, which is marked Exhibit A, and the said [paper] is hereto annexed.

EXHIBIT A.

Office of Ogden & Fairmont Nursery Co., Van Dorn & Abbott, proprietors, successors to Van Dorn, Lashus & Co.

Memorandum of Improvements on the S. E. Qr. of the S. E. Qr., Sec. 35.

793

					Value.
	A house and other conveniences				125 00
30	acres broke, 3 put in cultivation				100 00
400	black walnut trees,	3 y'rs old,	10 cts.		40 00
45	8-ft. maples	5 "	50 "		22 00
18	10 "	2 "	2½ "		45 00
38,500	box, alder, & ash,	2 "	2 "		770 60
58	pears and cherries,	3 "	25 "		14 50
130	Lombardy poplars	8 ft. high	20 "		26 00
370	willows	4 "	10 "		37 00
65	silver poplars	3 "	10 "		6 50
197	Balm Gilead	8 "	25 "		49 25
296	box alders	4 "	20 "		59 20
317	maple	4 "	15 "		47 55
63	wild cherry	6 "	25 "		15 75
200	box alder	6 "	25 "		50 00
130	cottonwood	4 "	5 "		6 50
172	weeping willow	2 "	10 "		17 20
	Raspberry				20 00
					$1,459 45

Deposition of Frank P. Phelps.

794 Cross-examined by L. C. BURR for Giles *et al.*:

Q. How long have you been working for Van Dorn & Abbott?

A. Most of the time for three years, except this spring.

Q. Tell the court where the southeast corner of this 40 acres is.

A. Just on the hill adjoining the house—just south of my house; I live on the place.

Q. How many feet and in what direction from the house?

A. I live near the N. E. corner. The house is about 20 rods from the N. E. corner of the land, and the southeast corner would be about 60 rods south.

Q. How many feet west of the road is the S. E. corner of that land?

A. I think the corner-stone is in the middle of the road; half the road on the land.

Q. What direction does the road run?

A. N. & S. x 14th St. This 40 is on the W. side of the road.

Q. You swear positively that the trees you have spoken of all lie west of the road you have spoken of?

A. Yes, sir.

Q. Now do you swear that the S. E. S. E. qr. of sec. 35 lies on

the west side of the road you have spoken of—that is, an extension of 14th St?

A. Yes, sir; west of 14th St.

Q. Are you acquainted with the prolongation of 11th St., from the city of Lincoln, opened by the Co. com'rs, going between the Buckstaff place and the Home of the Friendless?

A. Yes, sir; I came down that street this morning.

795 Q. Is the land that you have spoken of lying between these 2 roads?

A. No, sir; the 11th St. road cuts it in two.

Q. How much of this 40 acres, S. E. S. E. Sec. 35, lies to the west of the 11th St. road?

A. About 12 rods wide on west side of 11th St. I stepped it one time with a view to buy.

Q. How many of these trees—take your exhibit and point them out—how many of them are on the west side of the 11th St. road?

A. The black walnuts are on the south side of the 40, running clear along lengthways from 14th St. to west side of the 40. These 45 maple trees, 3 years old, are running north and south on 14th St. There are none west of 11th St., except the walnuts.

Q. How many walnuts are W. of 11th?

A. I don't know; I counted them on south line of the whole 40, clear across.

Q. How many acres of corn are growing on E. side of 11th St.?

A. I think it is 25 acres E. of 11th St.

Q. What other grain is growing on this 40 acres?

A. The west side of 11th St. has some potatoes.

Q. Are there any trees growing in this cornfield?

A. The 38,500 trees, box, elder, & ash, are growing in a square in the cornfield. This was by actual count.

Q. How close together are these trees?

A. Just as thick as they could come up from the seed; I helped plant the seed.

Q. When were they planted?

A. They were planted year before last; that would make them two years old.

Q. Do you swear to the court that they are worth $770.00?

A. I will swear they will sell at 2½ cents each, or $25.00

796 per thousand, selling them as nursery stock.

Q. Do I state the boundary lines of this 40 acres correctly, bounded on the E. by 14th St.; the west line is 12 rods west of 11th St., bounded on the south by a row of walnut trees that run up to a row of cottonwood trees that extend to 14th St., the cottonwood trees running along the north line of what is called the C. C. Burr 10 acres?

A. No, sir; it does not run that way at all. The walnuts run from the S. E. corner of this 40—run due west clear across the 40—the number I state is on the south line of the 40.

Q. What has Mr. Van Dorn and Lashus for the past 7 or 8 years been using of the 40 acres west of and adjoining this 40 acres?

A. The 40 right west of it has not been used by them at all, for it does not belong to them.

Q. What have they been using the 40 that corners with this one for?

A. They have not been using a 40 that corners up to this one.

Q. What direction do you think the Van Dorn and Lashus house is from the S. E. S. E. Q. 35?

A. It is a little south and west, a few rods down from this—pretty near corners with this one, but not quite.

Q. You know that it does not corner?

A. Don't think it does; don't know positively.

Q. How do you know the boundary lines of the S. E. S. E. sec. 35?

A. The S. E.? I don't know who owns the land south of this 40. There is the Franklin 10 acres to the south joins on from the west. The S. E. corner corners on 14th. This land, I don't know who owns, on the south.

797 Q. The price you have put on these trees that you think are on this 40 acres is the general price that the trees would sell for as nursery stock?

A. Yes, sir; these trees would sell for the price I have set down there as nursery stock.

Q. That is, they would sell for that in the same manner & way that Van Dorn & Lashus sold their other stock?

A. Yes, sir.

Q. Now, will you tell the court what use did Van Dorn & Lashus put the 40 acres to on which they live?

A. They did not put it to any use; they don't live on a 40.

Q. How much did they live on?

A. I think it was 10 acres their homestead is, I think, they told me.

Q. Do you still wish to evade telling what use they put that land to?

Little *et al.* object [as] improper cross-ex. Overruled & exception.

A. That 10 acres, their homestead, is *to* trees, fruit, & residence.

Q. You worked for them?

A. Yes, sir.

Q. All you did for them was to take care of their homestead?

A. No, sir.

Q. What did you do for them?

A. I dug trees and handled their nursery stock.

Q. What nursery stock was it you worked for them? Describe where that lies.

A. This nursery stock was brought from Ill's, heeled in on this 40, and by us hired men left there from spring to fall and then sold through the country by agents.

F. P. PHELPS.

798 Exhibit A attached to this, following the testimony of this witness above written.

Fees: Deposition, 11 folios, 4.20

W. G. VAN DORN recalled:

State whether since you were upon the stand on Saturday you have counted and made a list of the trees growing on S. E. S. E. sec. 35, T. 10, R. 6 E.

A. I have.

Q. Produce that list.

A. This is the list (referring to Exhibit A of Phelps' deposition); Mr. Phelps counted the trees and had my pencil and kept tally.

Q. State whether you can give an accurate estimate of the value of these trees, and whether you desire to make any correction of your estimate of the value of these trees heretofore given in your testimony in this cause; if so, please now make such correction.

Giles objects that the witness has been upon the stand the 3rd or 4th time to testify as to the value of these premises, and that every 24 hours the value of the improvements seem to have grown to exceed the real estate itself. Objection overruled & exception noted.

A. I can now give an accurate estimate of the value; I desire to correct my former statement; my former statement was mere guess-work; we estimated the trees at 30,000; there is actually 38,500; I put them at the same valuation on Saturday, but in counting them up I made a mistake of one-half, and the mistake in the count; the total value is about as represented by that paper, "Exhibit A."

Cross-examined by L. C. BURR for Giles *et al.*:

Q. You swear the trees have grown since last Saturday from 800 to 1,600?

A. No, sir; I don't.

799 Q. Has the value of the land increased?

A. I don't know.

Q. What is the value of the land to-day?

A. I don't know, but near $100.00, or more. I would like to explain more—you don't understand me.

Q. What do you mean by $100.00?

A. $100.00 per acre.

Q. Are you putting the value on the land as of to-day or last Saturday?

A. Don't think there is any difference.

Q. If the land last Saturday was worth $100.00 per acre it is not worth $200.00 per acre?

A. No, sir.

W. G. VAN DORN.

Fees: Folios, 3, 60c.

WM. M. CLARK, a witness on behalf of S. W. Little *et al.*, complainants, &c., being first duly sworn, was examined in chief by Mr. LAMB, and deposes and testified as follows:

My name is Wm. M. Clark; age, 43 years; residence, Lincoln, Nebr.; knew Allen W. Hawley; knows W. ½ S. E. sec. 19, T. 10, R. 7, and Hawley's trees thereon.

Q. State what, in your opinion, the improvements on that land are worth, the trees separate from the tillage of the land.

[A.] ——.

Q. State your occupation, and whether you are acquainted with farming lands, and the value of trees and improvements usually thereon.

A. Yes, sir.

Q. Question last but one above renewed.

Giles objects as incompetent, immaterial, & irrelevant. Objection overruled, and Giles excepts.

800 A. The trees I consider worth at least $3.00 each; to break the land & put it in its present state of cultivation is worth $40.00 per acre; to break it would cost $2.50 per acre; to rebreak it and pulverize it and put it in good condition would make it worth that.

Cross-examined:

Q. Taking these valuable trees, the height, state of cultivation that the land is in—its extraordinary, valuable location for the whole 80 acres—how much per annum is it worth, its rental value?

A. It is worth $5.00 per acre.

Q. You live next adjoining this land on the south?

A. I do.

[Q.] And are well acquainted with its rental value per annum per acre?

A. I am.

WM. M. CLARK.

Fees:

Deposition, 2 folios	40
Swear- witness	10
Witness fees	1 50

The further taking of testimony is adjourned until Tuesday morning, July 3, 1883.

WM. R. KELLY,
Special Master.

TUESDAY, *July* 3, 1883.

Present: As before.

L. W. BILLINGSLEY, recalled by the said complainants, &c., further deposes and says on examination by Mr. LAMB:

State whether you are acquainted with the property known as lots 5 & 6 of block 32, Dawson's add. to S. Lincoln, and the buildings thereon.

Giles objects as incompetent, immaterial, & irrelevant. Obj. overruled & exception noted.

A. Yes, sir.

Q. State the value of each of these lots and the buildings separately—the Henderson premises.

801 Giles objects as incompetent, immaterial, & irrelevant. Obj. overruled & exception noted.

A. The two lots are together worth $300.00; the corner lot (6) is worth $25.00 more than the other lot (1). The improvements are worth from $550.00 to $600.00; they consist of main part of a story & a half house and the eastern side 1 story, in all 6 rooms; a well and outhouse; I think that is all the improvements there are; the house [was] built 6 or 7 years ago.

Q. Pass to lot 1, in block 32, and give its value, with the improvements (Giles objects as to last. Same ruling & ex.)—Cheeney property.

A. Lot 1, b'k 32, cor. 12 & Pine, is worth $175.00, corner lot. Improvements, $500.00, consist of house—small house—1½ story main part, about 4 rooms in all, and a porch, well, outhouse, small stable or corn shed, and a lot of very nice forest and fruit trees; built about 2 years ago.

Q. Pass to lot 1, b'k 33, Daws-.'s add. to S. Lincoln.

Giles objects as before. Same ruling & same exception.

A. Lot 1, b'k 33, corner Rose & 13th St., is worth $150.00; the house and improvements, $400.00; it is a 1-story house, 3 or 4 rooms, I think; there is a well and outhouse and a small shed or stable, a very few fruit trees, and few forest trees; the house has been built 7 or 8 years, I think—the McSweeny property.

(Evidence withdrawn by consent.)

Q. Pass to the next, lot 6, b'k 38, Austin's.

Giles objects as before. Same ruling and same exception.

802 A. Lot 6, b'k 38, is worth $125.00; the house and improvements, $350.00. The house is a small frame house—3 or 4 rooms. There is an outhouse and a few trees.

Q. Pass to lots 5 & 6, b'k 49; Rhoda Prindle.

Giles objects same as before, and because the owner, Rhoda Prindle, is not a party to the suit—never authorized the commencement of the suit.

Question withdrawn.

Q. Pass to lot 12, b'k 41—the Wood property.

Giles objects as before, and same ruling and same exception.

A. Lot 12, b'k 41—the lot is worth $200.00; the house, $450.00. It is [a] frame house, well built—about 4 rooms, stone foundation—built about 5 or 6 years.

Q. State what, in your opinion, is the fair market value of the lots without the buildings occupied by the Redford, Trickey, Turner, and May stores.

Giles objects as incompetent, immaterial, & irrelevant. Objection overruled & exception.

A. The Turner lot (O & O) is worth $5,000.00; the May lot (Little)

is worth $5,500.00; the Redford lot (Stewart) is worth $5,500.00; the Trickey lot (Alexander) is worth $5,500.00.

Q. What, in your opinion, is the fair market value of the Van Dorn & Lashus tract, S. E. — S. E. sec. 35, T. 10, R. 6, without improvements?

Giles objects as incompetent.

A. $100.00 per acre.

Cross-examined by L. C. BURR:

[Q.] Give a detailed estimate of the size, height, length, and breadth; of how many feet of siding of lumber, and the
803 yards of plastering, the yards of paint, and the glazing—brick in chimneys—that there are in the buildings that you have mentioned in lot 5 & 6, b'k 32; also the building on the Cheeney lot in lot 1, b'k 32; also the buildings you have mentioned on lot 6, b'k 38, called the Austin lot, together with lot 12, in b'k 41, called the Wood lot.

A. I cannot do it unless I would take considerable time to make an accurate measurement, but I think I can tell to within a few dollars of what it will take to build houses of their character, for I have figured on and built 8 or 10 houses of that kind in this city in the last 4 or 5 years, and I can figure as closely on the material and what I can build such buildings as any contractor in this city.

Giles now moves to strike out all the answer of the witness as to what he thinks, because it is not responsive to the question. Motion overruled & exception allowed.

Q. You have put your guess from observation of these buildings at the price you think it would cost to build them, have you not?

A. I have not put my guess, but my judgment as to their value by observation as to what it would cost to build them, and allowed a reasonable per cent. deduction for their age and injuries they have sustained since their building; I say they are worth that sum as they stand.

Q. Are you not interest[ed] in the result of this suit—financially interested—outside of any attorney fee?

A. I don't think I am as to any of the lots involved in this suit, but I am interested in my covenants of warranty for some lots in Dawson's addition.

Q. You are also interest[ed] as attorney in this case?

A. I have no interest whatever. This was a suit Mr. Lamb
804 took after the dissolution of our firm of Lamb, Billingsley, and Lambertson.

LORENZO W. BILLINGSLEY.

It is stipulated, subject to all proper objection to the matter, that J. H. McMurtry and T. S. Ganter will testify in all respects to said property as testified by L. W. Billingsley, and same as proof is offered, and received with same exceptions as to the rulings on the testimony.

Fees: Deposition and stipulation, 11 folios, 2.20.

WILLIAM BARR, a witness on behalf of S. W. Little *et al.*, being first duly sworn, was examined in chief by Mr. LAMB, and deposes and says as follows:

My name is William Barr; I reside in Lincoln; have lived here 14 years; I have since then been dealing in real estate; have bought and sold it considerably; am acquainted with the value of real estate in Lincoln and its vicinity.

Q. State what, in your opinion, is the value of each of these several lots fronting on "O" St. known as the Redford, Trickey, Turner, and May lots, without the buildings, the lots being from 20 to 24 feet wide; they vary in some in size.

Giles objects as incompetent, immaterial, and irrelevant. Obj. overruled & ex. noted.

A. The Redford lot is worth, I think, between $4,000.00 to $5,000.00; the Trickey lot about the same; the Turner lot about the same. Well, I should put them all at about the same price; the May lot might be worth up to $5,000.00; it is a little wider.

WM. BARR.

Fees:

Depositions, 2 folios	40
Swear- witness	10
Witness fees	$1 50

Paid by Lamb for S. W. Little.

805 D. W. MOSELY, a witness on behalf of the said S. W. Little *et al.*, being first duly sworn, was examined in chief by Mr. LAMB, and deposes and says:

My name is D. W. Mosely; I reside at Lincoln; have lived here 5 years; am in the real estate business; I am acquainted with value of real estate in Lincoln.

Q. State what, in your opinion, is a fair market value per front foot of the real estate where May's, Turner's, Trickey's, and Redford's stores are.

Giles objects as incompetent, immaterial, and irrelevant. Objection overruled and exception allowed.

A. $250.00 per front foot, the lots being 142 feet deep.

Cross-examination waived.

D. W. MOSELY.

Fees:

Deposition, 2 folios	40
Swear- wit.	10
Witness fees	1 50

Paid by W. J. Lamb, for compl'ts.

John P. Dorr, a real estate agent, it is agreed, will testify to the facts as those testified by W. D. Mosely.

J. N. Boggs, a witness on behalf of the said S. W. Little, being first duly sworn, was examined in chief by Mr. Lamb, and deposes and says as follows:

My name is J. W. Boggs; I am living in Lincoln, Nebr.; I am now and have been for some months the deputy county treasurer for Lancaster county, Nebr.

[Q.] Will you please produce a statement of the taxes and the amount thereof paid and by whom paid since the year 1879 upon the list of lands and lots which I now hand you?

Giles objects, as incompetent, immaterial, & irrelevant. Objection overruled & exception.

806 A. I will do so; have been engaged in preparing the same, and the following is such list, which is annexed hereto as Exhibit "B."

JOHN W. BOGGS.

Fees:

Deposition, 2 folios	40
Swear- wit.	10
Witness fees	1 50

Paid by compl'ts sol's.

Lot.	Bl'k.	Tax, 1879.	Tax, 1880.	Tax, 1881.	Tax, 1882.
		$189.00.	$165.48.	$194.25.	$197.25.
18 ft. 9 [in.] W. side lot 5 & 8 in. E. side L. 16, B. 54.	---	June 21, '80. J. D. Bacon	May 5, '81. Owen & Oakly	Nov. 8, '82. Owen & Oakly	M'ch 28, '83. Baum, receiver.
		$236.24.	$229.07, am't sold for.	$271.95.	$263.00.
Lot 6, bl'k 54, except 8 in. off E. side.	---	June 2, '80. S. W. Little	Sold for tax Nov. 15, '81, to W. T. Little.	Nov. 7, '82. W. J. Lamb, att'y.	July 28, '82. Baum, Re.
		$182.24.	$183.25, am't sold for.	$203.95.	$197.25.
15.63 ft. W. side lot 84 & 6 ft. 3 [in.] N. E. side 5, W. ½ lot 3.	54	April 28, '80. D. B. Alexander	Sold for tax Nov. 15, '81, to W. T. Little.	Nov. 6, '82. W. J. Lamb, att'y.	June 2, '83. Baum, rec'r.
		$189.00.	$177.30.	$194.25.	$197.25.
9.30 ft. E. side 4	54	June 4, '80. F. T. Sherwin	July 2, '81. F. T. Sherwin	Nov. 8, '82. A. P. Stewart	M'ch 28, '83. Baum, rec'r.
Dawson's add.:					
		$11.81.	$11.82.	$16.19.	
4	31	Aug. 9, '80. J. D. McDonald, taxed.	May 5, '81. Owen & Oakly	May 31, '82. E. Hollowell	Not paid.
		$1.01.	$1.48.	$2.65.	
3	31	May 6, '81. D. B. Alexander	May 6, '81. D. B. Alexander	Sold for tax Nov. 20, '82. W. J. Lamb.	Not paid.
3	33	Not paid	Not paid	Not paid	Not paid.
		68c.	89c.	97c.	$1.32.
5	36	May 4, '80. A. C. Hustis	Ja'y 14, '81. A. C. Hustis	May 4, '82. A. C. Hustis	May 17, '83. A. C. Hustis.
		68c.	89c.	97c.	$1.32.
6	"	do.	do.	do.	do.
		68c.	89c.	97c.	$1.32.
7		"	"	"	"

8	"	68c.	89c.	97c.	$1.32.
		"	"	"	"
1	37	68c.	89c.	1.30.	$1.32.
		"	"	"	"
2	"	68c.	89c.	97c.	$1.32.
		"	"	"	"
3	"	68c.	89c.	97c.	$1.32.
		"	"	"	"
4	"	68c.	89c.	97c.	$1.32.
		"	"	"	"
5	"	68c.	89c.	97c.	$1.32.
		"	"	"	"
6	"	68c.	89c.	97c.	$1.32.
		"	"	"	"
7	"	68c.	89c.	97c.	$1.32.
		"	"	"	"
8	"	68c.	89c.	97c.	$1.32.
		"	"	"	"
9	"	68c. Not paid	Not paid	Not paid	Not paid.
10	"	68c. May 4, '80. A. C. Hustis	89c. Ja'y 14, '81. A. C. Hustis	97c. May 4, '82. A. C. Hustis	$1.32. May 17, '83. A. C. Hustis.
11	"	68c.	89c.	97c.	1.32.
		"	"	"	"
12	"	68c.	89c.	1.30.	1.32.
		"	"	"	"
7	31	$1.01. July 12, '81. A. J. Sawyer	Not paid	Not paid	Not paid.
8	"	68c.	Not paid	Not paid	Not paid.
		"			
9	"	68c.	Not paid	Not paid	Not paid.
		"			
808 ? 7	29	$1.35. Mar. 5, '80. J. Friedman	$1.77. Ap'l 15, '81. J. Friedman	$2.59. Mar. 22, '82. J. Friedman	$2.63. Mar. 9, '82. H. F. Hurbert.
? 8	"	$1.01. do.	$1.48. do.	$2.26. do.	$1.97. do.
11	47	68c. do.	89c. do.	97c. do.	$1.32. do.

Dawson's Add.

Lot.	Blk.	Tax, 1879.	Tax, 1880.	Tax, 1881.	Tax, 1882.
		68c.	89c.	$1.30.	$1.32.
12	47	Mar. 5, '80. J. Friedman	Ap'l 15, '81. J. Friedman	Mar. 22,'82. J. Friedman	Mar. 9, '82. H. F. Hurbert.
6	38	Not paid	Not paid	Not paid	Not paid.
		$1.01.	1.48.		
1	38	Feb'y 27,'80. Kate A. Eckman	Aug. 30, '81. S. A. Gabriel	Not paid	do.
		68c.	89c.		
2	"	do.	do.	Not paid	do.
3	"	do.	do.	Not paid	do.
		$9.44.	$15.37.	$20.73.	
All	39	Sept. 2, '80. L. J. Bumstead	Mar, 17, '82. L. J. Bumstead	Oct. 24, '82. C. A. Bumstead	do.
		$1.35.			
1	40	Nov. 27, '80. M. E. Snowden	Not paid	Not paid	do.
		$1.01.			
2	"	do.	Not paid	Not paid	do.
		$1.01.			
3	"	do.	Not paid	Not paid	do.
		$1.01.			
4	"	do.	Not paid	Not paid	do.
		68c.			
5	"	do.	Not paid	Not paid	do.
		68c.			
6	"	do.	Not paid	Not paid	do.
		86c.	$1.48.		
1	42	Aug. 4, '81. C. C. Snowden	Aug. 4, '81. C. C. Snowden	Not paid	Not paid.
		$1.01.	$1.48.		
2	"	do.	do.	Not paid	Not paid.
		$1.01.	$1.48.		
3	"	do.	do.	Not paid	Not paid.
		$1.01.	$1.48.		
9	"	do.	do.	Not paid	do.
		$1.01.	$1.48.		
10	"	do.	do.	Not paid	do.

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	11	"	$1.01. do.	$1.48. do.	Not paid	do.	
	12	"	$1.01. do.	$1.48. do.	Not paid	do.	
	7	47	68c. do.	89c. do.	Not paid	do.	
	8	"	68c. do.	89c. do.	Not paid	do.	
	9	"	68c. do.	89c. do.	Not paid	do.	
	? 8	41	$1.01. July 22, '80. Thos. Wood	$1.48. Apr. 12, '81. Thos. Wood	$1.94. May 9, '82. Thos. Wood	$2.30. May 31, '83. Thos. Wood.	
	9	"	$1.01. do.	$1.48. do.	$1.94. do.	$2.30. do.	
809	10	41	$1.01. July 22, '80. Thos. Wood	$1.48. Apr. 12, '81. Thos. Wood	$1.94. May 9, '82. Thos. Wood	$2.30. May 31, '83. Thos. Wood.	
	11	"	$1.01. do.	$1.48. do.	$1.94. do.	$2.30. do.	
	12	"	$1.01. do.	$8.86. do.	$9.71. do.	$9.21. do.	
	10	32	Not paid	Not paid	Not paid	Not paid.	
	5	32	68c. Mar. 12, '80. Mrs. M. Meyer	$1.18. May 16, '81. M. Meyer	Not paid	do.	
	6	32	$6.75. do.	$11.82. do.	Not paid	do.	
	? 4	32	Not paid	Not paid	Not paid	do.	
	1	"	$1.01. Ap'l 19, '80. A. D. Gregg	$3.25. May 5, '81. F. W. Dexter	$6.70. Redeemed by M. B. Cheney. Sold for tax Nov. 20, '82. F. W. Dexter.	$5.26. May 3, '83. M. B. Cheney.	
	2	"	68c. do.	$1.18. do.	$2.07. Redeemed by M. B. Cheney. Sold for tax Nov. 20, '82. F. W. Dexter.	$1.97. do.	
	4	44	68c. June 7, '80. C. C. Burr $8.09.	89c. M'ch 19, '81. Burr & Muir $11.82.	97c. May 17, '82. Burr & Muir $12.94.	Not paid.	
	All	46	July 17, '80. H. A. Tuttle, Gerard.	July 8, '81. H. A. Tuttle, Gerard.	July 5, '82. H. A. Tuttle	do.	

Dawson's Add.—Continued.

Lot.	Blk.	Tax, 1879.	Tax, 1880.	Tax, 1881.	Tax, 1882.
3	47	Not paid	Not paid	Not paid	Not paid.
4	"	Not paid 68c.	Not paid	Not paid 97c.	do.
5	49	Mar. 31, '80. C. C. Burr 68c.	Not paid	Oct. 16, '82. R. Prindle 97c.	do.
6	"	do. 68c.	Not paid $1.18.	Oct. 16, '82. do.	do.
? 1	31	Oct. 20, '80. J. C. Doubt $17.50.	July 2, '81. D. F. Doubt $21.21.	Not paid $61.50.	do. $25.80.
S. E. S. E. sec. 35, T. 10, R. 6.	----	Apr. 30, '80. Vandorn & Lashley. $23.38.	May 4, '81. Vandorn & Lashley. $31.19.	July 31, '82. Vandorn & L. $34.92.	May 5, '83. Baum, rec'r.
W. ½ S. E. sec. 19, T. 10, R. 7; N. W. S. E. sec. 19, T. 10, R. 7; N. ½ S. W. sec. 19, T. 10, R. 7.	----	May 8, '80. A. W. Hawley	May 23, '81. A. W. Hawley $2.60.	May 11, '82. A. W. Hawley	Not paid.
E. ½ W. ½, S. ½, S. W. S. E. sec. 19, T. 10, R. 7.	----		M'ch 26, '81. H. O. Snow $2.60.	Not paid $3.64.	Not paid. $3.30.
W. ½ W. ½, S. ½ S. W. S. E. sec. 19, T. 10, R. 7.	----		M'ch 26, '81. Sam'l Arthur $5.20.	Apr. 25, '82. S. Arthur $5.82.	Feb'y 19, '83. S. Arthur.
E. ½ S. ½, S. ½ S. W. S. E. sec. 19, T. 10, R. 7.	----		M'ch 26, '81. Geo. Warder	June 17, '82. Geo. Warder	Not paid.

810 UNITED STATES OF AMERICA,
District of Nebraska, State of Nebraska:

I, William R. Kelly, examiner in chancery, duly appointed by the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that upon the several days named in the foregoing depositions and certificates I was attended, at my office, in the city of Lincoln, by the respective counsel and the said several witnesses aforesaid; that the said witnesses were by me each severally sworn, cautioned, and examined, and the said several depositions were by me reduced to writing and read over to the several witnesses, and that said witnesses then each severally subscribed the same in my presence. I further certify that Exhibit "A," attached to the deposition of J. W. Boggs, is the original document by him produced in response to the request made of him upon his examination, and was introduced in evidence by the said respondents.

Dated Lincoln, Nebr., July 3rd, 1883.

WM. R. KELLY,
Examiner in Chancery.

Received, Lincoln, Nebraska, September 3rd, 1883, of Walter J. Lamb, solicitor for the respondents in said cross-bill, the sum of twenty-six $\frac{70}{100}$ [dollars] in full for my fees, as examiner, in taking the above and foregoing depositions.

WM. R. KELLY,
Examiner in Chancery.

Upon the back of said testimony appear endorsements in words and figures following, to wit: No. 202, F. Testimony taken before W. R. Kelly, special master.

811 Thereupon, afterwards, to wit, on the 12th day of November, 1883, report of special master was filed in said case, which said report of special master is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

S. W. LITTLE, SAMUEL ARBUCKLE, D. B. ALEXANDER, A. J. Sawyer, S. G. Owen, Lorenzo Assmesson, R. H. Oakley, Sarah J. Purcell, A. P. S. Stuart, Thomas R. Clark, Mary A. McElhinney, D. C. Kinsell, Hannah Selwood, Alexander C. Huestes, Allen W. Hawley, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, A. F. Lewis, Samuel Arthur, G. F. Thornton, Sarah Cummings, William H. Rundell, Jacob Freedman, O. P. Austin, J. A. Buckstaff, Mary J. McNair, George D. Camp, Wilbur F. Kellogg, Elizabeth N. Chase, Sarah A. Gable, Samuel Aughey, Clarinda A. Bumstead, Elizabeth Paden, Martha E. Snowden, Thomas Woods, Joseph Hoagland, Eliza W. Pillsbury, Henry V. Hoagland, W. S. Garrison, C. L. Hooper, S. E. Story, V. E. Farmer, Josephine St. Louis, Frank J. Wassika, Ellen N. Miller, John H. Schwabold, Helen Weber, Samuel Henderson, Christian Bohlman, Joseph Richardson, Patrick Lyons, W. Sanford Gee, Allen Cogswell, M. B. Cheeney, Mary E. Maloney, Emma A. Beach, F. Loath, Francis D. Howell, L. S. Howell, Samuel D. Bacon, Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased; Jacob Freedman, Samuel T. English, Guy A. Barnnum, H. O. Snow, George Warder, D. D. Muir, George W. Severance, Rhoda A. Prindell, Mina W. Brown, W. J. Van Dorn, and G. W. Lashus } Original Bill.

vs.

EZEKIEL GILES, L. C. BURR, H. H. WHEELER, Albert L. Dawson, William R. Dawson, Sarah H. Dawson, M. S. Dawson, A. A. Knicely, William A. J. Goodwin, Melita C. D. Tillman, Minnie S. Dawson, and Carlton Dawson.

812 EZEKIEL GILES

vs.

S. W. LITTLE, D. B. ALEXANDER, and MARTHA, His Wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, A. P. S. Stuart, Mary A. McElhinney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arthur, Jacob Freedman, O. P. Austin, Sarah A. Gable, Samuel Aughey, Clarinda A. Bumstead, Martha Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased; Guy A. Barnum, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweney. } Cross-bill.

To the Honorables George W. McCrary and Elmer S. Dundy, judges of said court:

In pursuance to a decretal order of said court made and entered in said cause, bearing date the 14th day of June, A. D. 1883, at a stated term of this court, held at the United States court-house in the city of Omaha, in said district, by which said cause was referred to William R. Kelly, as special master in chancery, to make and return to this court certain findings as therein specified and directed, now I, William R. Kelly, as such special master, do respectfully report that I have proceeded to investigate the said matters so referred to me; that in such investigation I have been attended by counsel for the parties hereto as follows: For S. W. Little and others, complainants in said original bill and respondents in said cross-bill, by W. J. Lamb, T. M. Marquette, & Harwood and Ames; for Ezekiel Giles and others, respondents to the original bill and the complainants in said cross-bill, by Messrs. Woolworth and L. C. Burr.

That I have considered the matters so referred to me, and I do further find and report on each of the said matters and directions as follows:

813 First.

1. At what date was Mrs. Editha J. Dawson married to one Pickering?

Answer. I find that Editha J. Dawson was married to one Pickering on the fourteenth day of December, A. D. 1879.

Second.

2. What were the dates, respectively, of the several deeds made by the children of the testator, Jacob Dawson, to the defendants, Burr and Wheeler, and by them to Ezekiel Giles?

Answer. I find that said deeds, their dates, and the dates of their acknowledgments are as follows:

a. Deed. William E. Dawson and Sarah H. Dawson, his wife; Melita C. Dawson, and Minnie S. Dawson to Lionel C. Burr and Hiland H. Wheeler. Dated September 15, 1879. Acknowledged December 3, 1879.

b. Deed. Albert L. Dawson and Mahala Dawson, his wife; Evaline M. Dawson Kniceley and A. A. Kniceley, her husband, to Hiland H. Wheeler and Lionel C. Burr. This deed is dated September 15, 1879. Acknowledged by Albert Dawson and wife on February 6, 1880, and by Kniceley on February 25, 1880.

The two above deeds were delivered to said Burr and Wheeler, the first about December 3, 1879; the last about February 25, 1880.

c. Deed. Hiland H. Wheeler and Lionel C. Burr & wife to Ezekiel Giles. This deed is dated April 27, 1880. It was acknowl-
814 edged on June 11, 1880. It was delivered to Ezekiel Giles on June 13, 1880.

d. Melita C. Dawson Tillman to Ezekiel Giles. This deed is dated January 2, 1882. It was acknowledged January 13, 1882; delivered about the same time. This deed refers to and in terms confirms a former deed made by her during her minority, being the deed above, marked "*a.*"

Third.

III. What are the amounts and date of the payment of taxes on the several parcels of land in question in the cross-bill paid by the defendants therein and each of them since the remarriage of the widow of the said Jacob Dawson?

Answer. The amount of taxes against each of the several tracts named in the memorandum annexed to said decree, the date of the payment of taxes, and by whom paid is shown by the memorandum thereof here following, viz:

Lot.	Bl'k.	Tax, 1879.	Tax, 1880.	Tax, 1881.	Tax, 1882.
18 ft. 9 inches W. side lot 5 & 8 inches east side lot 6, bl'k 54.	----	189.00. June 22, '80. J. D. Bacon	165.48. May 5, '81. Owen & Oakley.	194.25. Nov. 8, '82. Owen & Oakley.	197.25. M'ch 28, '83. Baum, rec'r.
Lot 6, bl'k 54, except 8 inches off east side.	----	$236.24. June 2, 1880. S. W. Little	229.07, am't sold for. Sold for tax Nov. 15, '81, to W. F. Little.	271.95. Nov. 7, '82. W. J. Lamb, c't'f.	263.00. July 2, '82. Baum, rec'r.
15.63 ft. west side lot 4 & 6 ft. 3 in. east side 5, bl k 54.	----	182.24. Apr. 28, '80. D. B. Alexander.	183.25, am't sold for. Sold for tax Nov. 15, '81, to W. F. Little.	203.95. Nov. 6, '82. W. J. Lamb, c't'f.	197.25. June 2, '83. Baum, rec'r.
W. ½ lot 3 & 9.30 ft. E. side 4.	54	189.00. June 4, '80. F. T. Sherwin	177.30. July 2, '81. F. T. Sherwin	194.25. Nov. 8, '82. A. P. S. Stewart.	197.25. M'ch 28, '83. Baum, rec'r.
Dawson's add.:					
4	31	11.81. Aug. 9, '80. J. D. McDonald, tax c't'f.	11.82. May 5, '81. Owen & Oakley.	16.19. May 31, '82. E. Hollowell	Not paid.
3	31	1.00. May 6, '81. D. B. Alexander.	1.48. May 6, '81. D. B. Alexander.	2.65. Sold for tax Nov. 20, '82. W. J. Lamb.	Not paid.
3	33	Not paid	Not paid	Not paid	Not paid.
5	36	68c. May 4, '80. A. C. Huestis	89c. Jan'y 14, '81. A. C. Huestis	97c. May 4, '82. A. C. Huestis	$1.32. May 4, '83. A. C. Huestis
6	36	68c. do.	89c. do.	97c. do.	1.32. do.
7	36	68c. do.	89c. do.	97c. do.	1.32. do.

Dawson's Add.

Lot.	Blk.	Tax, 1879.	Tax, 1880.	Tax, 1881.	Tax, 1882.
		68c.	89c.	97c.	1.32.
8	36	May 4, '80. A. C. Huestis	Jan'y 14, '81. A. C. Huestis	May 4, '82. A. C. Huestis	May 4, '83. A. C. Huestis.
		68c.	89c.	1.30.	1.32.
1	37	do.	do.	do.	do.
		68c.	89c.	97c.	1.02.
2	"	do.	do.	do.	do.
		68c.	89c.	97c.	1.32.
3	"	do.	do.	do.	do.
		68c.	89c.	97c.	1.32.
4	"	do.	do.	do.	do.
		68c.	89c.	97c.	1.32.
5	"	do.	do.	do.	do.
		68c.	89c.	97c.	1.32.
6	"	do.	do.	do.	do.
		68c.	89c.	97c.	1.32.
7	"	do.	do.	do.	do.
		68c.	89c.	97c.	1.32.
8	"	do.	do.	do.	do.
9	"	Not paid	Not paid	Not paid	Not paid.
		68c.	89c.	97c.	1.32.
10	"	May 4, '80. A. C. Huestis	Jan'y 14, '81. A. C. Huestis	May 4, '82. A. C. Huestis	May 17, '83. A. C. Huestis.
		68c.	89c.	97c.	1.32.
11	"	do.	do.	do.	do.
		68c.	89c.	1.30.	1.32.
12	"	do.	do.	do.	do.
		$1.01.			
7	31	Jan'y 12, '81. A. J. Sawyer	Not paid	Not paid	Not paid.
		68c.			
8		do.	Not paid	Not paid	Not paid.
		68c.			
9		do.	Not paid	Not paid	Not paid.

816 ? 7	29	1.35. do.	1.77. do.	2.59. do.	2.63. do.
? 8	29	1.01. do.	1.48. do.	2.26. do.	1.97. do.
11	47	68c. do.	89c. do.	97c. do.	1.32. do.
12	47	68c. do.	89c. do.	$1.30. do.	$1.32. do.
6	38	Not paid	Not paid	Not paid	Not paid.
1	38	1.01. Feb'y 27, '80. Kate A. Eckman	1.48. Aug. 30, '81. S. A. Gabline	Not paid	do.
2	38	68c. do.	89c. do.	Not paid	do.
3	38	68c. do.	89c. do.	Not paid	do.
All	39	9.44. Sept. 2, '80. L. D. Bumstead	15.37. Mar, 17, '82. L. J. Bumstead	20.73. Oct. 24, '82. C. A. Bumstead	do.
1	40	1.25. Nov. 27, '80. M. E. Snowdon	Not paid	Not paid	do.
2	"	1.01. do.	Not paid	Not paid	do.
3	"	1.01. do.	Not paid	Not paid	do.
4	"	1.01. do.	Not paid	Not paid	do.
5	"	68c. do.	Not paid	Not paid	do.
6	"	68c. do.	Not paid	Not paid	do.
1	42	86c. Aug. 4, '81. A. S. Snowden	1.48. Aug. 4, '81. C. C. Snowden	Not paid	Not paid.
2	"	1.01. do.	1.48. do.	Not paid	Not paid.
3	"	1.01. do.	1.48. do.	Not paid	Not paid.
9	"	1.01. do.	1.48. do.	Not paid	do.
10	"	1.01. do.	1.48. do.	Not paid	do.

Dawson's Add.—Continued.

Lot.	Blk.	Tax, 1879.	Tax, 1880.	Tax, 1881.	Tax, 1882.
		1.01.	1.48.		
11	42	Aug. 4, '81. A. S. Snowden	Aug. 4, 81. C. C. Snowden	Not paid	Not paid.
		1.01.	1.48.		
12	"	do.	do.	Not paid	do.
		68c.	89c.		
7	47	do.	do.	Not paid	do.
		68c.	89c.		
8	"	do.	do.	Not paid	do.
		68c.	89c.		
9	"	do.	do.	Not paid	do.
		1.01.	1.48.	1.94.	2.30.
8	41	July 22, '80. Thos. Wood	Apr. 12, '81. Thos. Wood	May 9, '82. Thos. Wood	May 31, '83. Thos. Wood.
		1.01.	1.48.	1.94.	2.30.
9	"	do.	do.	do.	do.
		1.01.	1.48.	1.94.	2.30.
817 10	41	July 22, '80. Thos. Wood	Apr. 12, '81. Thos. Wood	May 9, '82. Thos. Wood	May 31, '83. Thos. Wood.
		1.01.	1.48.	1.94.	2.30.
11	"	do.	do.	do.	do.
		1.01.	$8.86.	9.71.	9.21.
12	"	do.	do.	do.	do.
10	32	Not paid	Not paid	Not paid	Not paid.
		68c.	1.18.		
5	32	Mar. 12, '80. M. Meyer	May 16, '81. M. Meyer	Not paid	do.
		6.75.	11.82.		
6	32	do.	do.	Not paid	do.
? 4	32	Not paid	Not paid	Not paid	do.
		1.01.	3.25.	6.70. Redeemed by M. B. Cheeney.	5.26.
1	32	Ap'l 19, '80. A. D. Gregg	May 5, '81. F. W. Dexter	Sold for tax Nov. 20, '82. F. W. Dexter.	May 3, '83. M. B. Cheeney.

		68c.	18.	2.07. Redeemed by M. B. Cheeney.	1.97.
2	"	do.	do.	Sold for tax Nov. 20, '82. F. W. Dexter.	do.
		68c.	89c.	97c.	
4	44	June 7, '80. C. C. Burr	M'ch 19, '81. Burr & Muir	May 17, '82. Burr & Muir	Not paid.
		8.09.	11.82.	12.94.	
All	46	July 17, '80. H. A. Tuttle, Gerard.	July 8, '81. H. A. Tuttle, Gerard.	July 5, '82. H. A. Tuttle	do.
3	47	Not paid	Not paid	Not paid	Not paid.
4	"	Not paid	Not paid	Not paid	Not paid.
		68c.		97c.	
5	49	M'ch 31, '80. C. C. Burr	Not paid	Oct. 16, '82. R. Prindle	do.
		68c.		97c.	
6	"	do.	Not paid	Oct. 16, '82. do.	do.
		68c.	1.18.		
? 1	31	Oct. 20, '80. J. C. Doubt	July 2, '81. D. F. Doubt	Not paid	do.
		17.50.	21.21.	61.50.	25.80.
S. E. S. E. sec. 35, T. 10, R. 6.		Apr. 30, '80. Vandorn & Lashly.	May 4, '81. Vandorn & Lashley.	July 31, '82. Vandorn & L.	May 5, '83. Baum, rec'r.
		23.38.	31.19.	34.92.	
W. ½ S. E. ¼, 19, T. 10, R. 7; S. W. ¼ S. E., 19, T. 10, R. 7; N. ½ S. W. ¼, 19, T. 10, R. 7.		May 8, '80. A. W. Hawley	May 23, '81. A. W. Hawley	May 11, '82. A. W. Hawley	Not paid.
			2.60.		
E. ½ W. ½, S. ½, S. W. ¼ S. E. ¼, 19, T. 10, R. 7.			M'ch 26, '81. H. O. Snow	Not paid	Not paid.
			2.60.	3.64.	3.30.
W. ½ W. ½, S. ½ S. W. ¼ S. E. ¼, 19, T. 10, R. 7.			M'ch 26, '81. Sam'l Arthur	Apr. 25, '82. S. Arthur	Feb'y 19, '83. S. Arthur.
			5.20.	5.82.	
E. ½ S. ½, S. ½, S. W. ¼ S. E. ¼, 19, T. 10, R. 7.			M'ch 26, '81. Geo. Warder	June 17, '82. Geo. Warder	Not paid.

818 Fourth.

IV. What are the character and value of the improvements made upon the premises in question in the said cross-bill, and the time each improvement was made, with a particular description thereof, from the time of the death of the testator, Jacob Dawson, to the filing of the cross-bill?

Answer. *a.* I find as to No. 1, Owen and Oakley, 18 feet and 9½ inches off the west side of lot five and eight inches off the east side of lot 6, block fifty-four, in Lincoln; that the improvements thereon are as follows: A two-story and basement brick, metal-roofed building, full width of the lot, and 80 feet in depth; the first story about 14 feet high, the second story about 12 feet high. This building was erected in 1871 by one Cody. The lower story and basement have been occupied by Wm. J. Turner, as tenant, for a drug store; the second story is and has been occupied by Dr. Grimes, a tenant, as office and rooms.

The improvements above named I find to be of the value of three thousand one hundred dollars ($3,100).

There is also a warehouse on said lot extending from the rear of the said building to the alley; this is a temporary structure. I find it was erected by and is claimed by Turner, the tenant. No proof has been given as to its value, and I am not able to find the value thereof.

The value of said lot without the improvements is the sum of $4,387.50.

b. As to No. 2, S. W. Little, lot 6, block 54, except 8 inches off the east side thereof:

The improvements on this lot is a two-story brick, metal-roofed, business house, first story about 14 feet, second story about 12 feet, set on a limestone foundation. It is the full width of the
819 lot as above described, and is one hundred feet deep. It was erected, completed, ready for occupancy on May 1st, 1878, and has from thence forward been continuously occupied by David May, as a tenant, for a clothing store.

I find that said improvements *is* of the value of four thousand three hundred dollars ($4,300.00).

The value of said lot without improvements is $5,475.00.

c. As to No. 3, Martha Alexander, being 15.63 feet off the west side of lot 4 and 6.25 feet off the east side of lot five, in block 54, in Lincoln:

The improvements on this lot consist of a two-story, brick, metal-roofed building (1st story 14 feet, 2nd story 10 feet) set on a sandstone foundation, which foundation has been duly protected and cased. The building was erected in 1871, and is part of the Cody block. The basement has no rental value, being made low by lowering the grade of the street and the floor of the building. Its occupancy is—first floor by Trickey's jewelry store, second floor by offices. The building occupies the full width of the lot, 21.88 feet, and is sixty feet deep.

The value of this building I find to be two thousand six hundred dollars ($2,600.00).

The value of said lot without improvements is $4,923.00.

d. As to No. 4, A. P. S. Stuart, being west ½ of lot 3 and 9.31 feet off the east side of lot 4, in block 54, Lincoln:

The improvements on this lot consist of a two-story, brick, metal-roofed business house, the first story of which is about 14 feet. The second story is about 10 feet, all set upon a sandstone foundation, which has been duly and properly protected. The building occupies the full width of the lot, and is 80 feet deep. The first floor and basement is and has been occupied as a boot and shoe store; the second story for offices and living rooms.

820 The value of said improvement I find to be the sum of three thousand three hundred and fifty dollars ($3,350.00). The value of said lot, without improvements, is $4,907.25.

In finding the value of said buildings I have based my finding upon the testimony of the witnesses Roberts, Hiltner, & Cook as to the value thereof as the best evidence thereof. The testimony of the other witnesses as to values I do not consider.

e. As to No. 20, lots 5 & 6, in block 32, Dawson's addition to South Lincoln, Samuel Henderson's—

I find the value of said lots to be	$300 00
I find the value of the improvements thereon to be	550 00
	$850 00

The said improvements consist of a one and a half [story] frame dwelling house with the eastern part thereof one story, containing in all six rooms. There is a well and an outhouse. These improvements were made about the year 1879.

f. As to No. 22, M. B. Cheeney, lot 1, block 32, Dawson's addition to South Lincoln—

I find the value of said lot to be	$175 00
I find the value of the improvements at	500 00
	$675 00

The improvements were made in 1881, and they consist of a small frame dwelling house, 1½ story, containing 4 rooms, a well, and an outhouse, a small stable, or cowshed, with a nice lot of forest and fruit trees.

g. As to No. 12, O. P. Austin, lot 6, in block 38, in Dawson's addition to South Lincoln—

I find the value of said lot to be	$125 00
I find the value of the improvements to be	350 00
	$475 00

The improvements consist of a small frame dwelling containing 3 or 4 rooms, an outhouse, and some trees. These improvements
821 were made, but the date is not disclosed by the evidence.

h. No. 18. As to lot 12, in block 41, in Dawson's addition to South Lincoln, Thomas Woods—

I find the value of this lot to be	$200 00
I find the value of the improvements to be	450 00
	$650 00

These improvements were made about 1878, and consist of a frame dwelling-house, with four rooms, standing upon a stone foundation.

j. As to Nos. 29 & 30, W. J. Van Dorn and G. W. Lashus, the S. E. ¼ S. E. ¼ of sec. 35, town. 10, range 6—

I find the value of said tract beyond improvements to be $100.00 per acre.

The improvements upon said land consist of a house and stable and breaking and subduing about 30 acres of the land and some forest trees; also of a lot of trees which constitute a nursery stock. The house is a one-story frame building, with an addition, in all about 15 x 20 feet, unpainted, built in 1881, and of the value of $100.00. No proof was made as to the stable. No proof was given of the number or value of the shade trees, except as may be shown in the list of nursery stock. Breaking and subduing 30 acres of the land I find is worth $4.00 per acre, being the sum of $120.00.

The nursery stock now on said premises was put out in the year 1880 and subsequently. It is, I find, of the kind, amount, value, and age and character stated in the following schedule thereof. I further find that said nursery stock is personal property, removable from the land without any injury to the estate.

Schedule of Nursery Stock Claimed as "Improvements."

400	black walnut trees,	3 years old,	@ 10	$40 00
45	8-foot maples,	" " "	@ 50	22 50
1,810	2-foot maples,	2 " "	@ 2½	45 00
	38,500 box elder & ash,	2 years old,	@ 2	770 00
822	54 peach & cherry trees,	3 years old,	@ 25	14 50
	130 Lombardy poplar trees,	8 feet high,	@ 20	26 00
370	willows,	4 feet high	@ 10	37 00
65	silver poplar trees,	3 "	@ 10	6 50
197	Balm of Gilead,	8 "	@ 25	49 25
295	box elder trees,	4 "	@ 20	59 20
317	maple,	4 "	@ 15	47 35
68	wild cherry,	6 "	@ 25	15 75
200	box elders,	6 "	@ 25	50 00
130	cottonwood,	4 "	@ 5	6 50
172	W. willows,	2 "	@ 10	17 20
	Raspberries			20 00
				1,454 45

All of which nursery stock was planted during and since the year 1880.

k. As to Nos. 31–34, Allen W. Hawley, W. ½ S. E. ¼, section 19, town. 10, range 7:

The only improvement on this tract consists of breaking and subduing the land and of certain trees, vines, &c., planted thereon. Breaking and subduing the land is worth the sum of $4.00 per acre. The trees are all on the Hawley 60 acres. There —180 apple trees, 15 Early Richmond cherry trees, and some grape vines. About one-half the apple trees and 10 of the cherry trees are 9 or 10 years old, and were planted before 1879. The trees are of the value of $500.00. The land is worth $60.00 per acre.

The holdings of said parties are:

N. W. S. E., 19, 10, 6, 40 acres, A. W. Hawley.
N. ½ S. W. S. E, " 20 " "
E. ½ W. ½ S. ½ S. W. S. E., 19, 10, 7, 5 acres, H. O. Snow.
W. ½ W. ½ S. ½ S. W. S. E., 19, 10, 7, 5 " S. Arthur.
E. ½ S. ½ S. W. S. E., 19, 10, 7, 10 acres, Geo. Warder.

823 As to the other tracts of land named in said memorandum in said decree no proofs were taken, and I am, therefore, unable to make any further findings under the fourth direction in said decree contained.

I further find that at the time of the death of Jacob Dawson he and his family occupied a sandstone dwelling-house, situated on said premises, in said block 54.

The dwelling was then of the value of $1,000.00. It had a basement and first floor. The basement was unplastered. The floor thereof was laid on 2 x 4; laid on the ground of the basement. About four feet was under ground and about four feet above ground. The first floor had five rooms, which were plastered; the remainder of the house was unplastered. The family lived in the basement. Three of the rooms on the first floor were rented.

The building was torn down in the spring or summer of 1870, but whether by Editha J. Dawson or her grantees does not appear.

Fifth.

What was the rental values, and also the rents, actually received by each defendant in said cross-bill, and of the receiver, of each and every several parcel and part of the improvements made by him or her since the remarriage of the said Editha J. Dawson to this day, stating the same with respect of the property as if the same were unimproved, and also improved, as he shall find the same?

Answer. 1. I find, as to No. 1, Owen and Oakley's being 18 feet and 9½ inches off the west side of lot five and eight inches off the east side of lot six, block 54, Lincoln; that—

a. From December 14, 1879, up to November 1, 1880, the rental value of said premises was $104.25 per month. That sum per month for that time was collected and received by J. D. Bacon,

824 the grantor of Owen and Oakley.

b. From November 1, 1880, to the appointment of the receiver (to Dec. 31, 1882) the rental value of said premises was the sum of $109.50 *dollars* per month. The defendants Owen and Oakley collected and received the rents thereof, at the rate of $109.50

per month, from November 1, 1880, up to December 31, A. D. 1882, both days inclusive, being 26 months; total, $2,747.00.

c. From the 1st day of January, A. D. 1883, up to June 14, 1883, and to July 1st, 1883, the receiver has collected the rents of said buildings and premises at the rate of $109.50 per month (their rental value), and has received in all the sum of $645.00. The receiver has paid taxes for 1882 out of said funds.

d. No improvements were put upon said premises by said Owen and Oakley since December 14, 1879. There is no proof of any repairs made thereon by any defendants.

I find as to said property the following:

Recapitulation.

Rents from Dec. 14, '79, to Nov. 1, 1880, received by J. D. Bacon, $1,094.64.

Rents from Nov. 1, '80, to Dec. 31, '82, received by Owen and Oakley, 2,747.00.

Rents from Jan'y 1st, 1883, to June 30, 1883, received by J. Ed. Baum, receiver, 645.00.

e. I find the rental value of said lot to be used for the purpose to which the same was applied to sustain the said buildings thereon was during all of said times, per annum, $200.00.

2. As to No. 2, S. W. Little, lot 6, block 54, except 8 inches off the east side thereof:

a. I find that the rental value of said premises, as they are, is and has at all times been, since December 14, 1879, the sum of $125.00 per month.

b. I find that defendant, S. W. Little, from Dec. 14, 1879,
825 to the 31 day of December, 1882, collected and received all the rents of said building at the rate of $125.00 per month.

c. I find that J. E. Baum, receiver, has, from the 1st day of January, 1883, received and collected all the rents of said premises at the rate of $125.00 per month.

d. No improvements or repairs have been made upon said premises since December 14, 1879.

e. The rental value of said lot, to be used for the purpose to which the same was applied, that of supporting and maintaining said building, has been the sum of $250.00 per annum.

Recapitulation:

Rents received by S. W. Little from Dec. 14, 1879, to Dec. 31, 1882, $4,562.50.

By J. E. Baum from Jan'y 1st, 1883, to June 30, 1883, @ $125.00 per month, $750.00.

3. As to No. 3, Martha Alexander being 15.63 feet off of the west side of lot 4 and 6 and $\frac{25}{100}$ feet off the east side of lot 5, in block 54, in Lincoln:

a. I find that the rental value of said premises from December 14,

1879, is and has been at the rate of $90.50 per month, besides repairs.

b. I find that the rental value of said lot for that time for the purpose to which it has been applied, that of sustaining and supporting said building, is and was the sum of $225.00 per annum.

c. I find that the rents of said premises from December 14, 1879, to the 31st day of December, 1882, were collected and received by Martha Alexander at the rate of $90.50 per month, except the sum of $158.00, delinquent rents collected by the receiver.

d. I find that J. E. Baum, receiver, has collected and re-
826 ceived the rents of said building from January 1st, 1883, to July 1st, 1883, at the rate of $90.50 per month.. $543 00
Delinquent rents..... 158 00

Total..... $701 00

Recapitulation.

Rents received by Martha Alexander..... $3,145 25
By the receiver..... 701 00

$3,846 25

4. No. 4, A. P. S. Stuart, being the west ½ of lots 3 and 9 and $\frac{37}{100}$ feet off the east side of lot 4, in block 54, Lincoln:

a. I find that the rental value of these premises from December 14, 1879, is and has been at the rate of $113.00 per month.

b. I find that the rental value of said lot for the purpose to which the same has been applied, that of sustaining and supporting said building, is the sum of $225.00 per annum.

c. I find that from Dec. 14, 1879, up to November 1st, 1881, the rents of said premises were collected and received by one Sherwin, then claiming to own said premises [as] Stuart's grantor, and that he received the sum of $2,542.50.

d. I find that from November 1st, 1881, to February 1st, 1882, the rents of said premises were collected by and paid to A. P. S. Stuart, defendant, at the rate of $113.00 per month, $339.00.

e. I find that from February 1st, 1882, to January 1st, 1883, the rents of said premises were not collected by Stuart, and that the receiver herein has, since his appointment, collected thereof $1,225.00.

f. I find that since January 1st, 1883, the said receiver has collected the rents thereof *from* January, February, March, and April, at $113.00 per month, $452.00; since that time for May and June, at $95.00, $190.00.

Recapitulation.

827 Rents collected by Sherwin..... $2,542 50
Rents collected by Stuart..... 339 00
Rents collected by receiver delinquent..... 1,225 00
From Jan'y 1, 1883, to July 1, 1883..... 642 00
1,867 00

$4,748 50

5. Nos. 29–30, W. J. Van Dorn and G. W. Lashus, S. E. ¼ S. E. ¼, sec. 35, town. 10, R. 6:

I find that this land was, on Dec. 14, 1879, uncultivated, raw prairie lands; that it was broken and subdued for cultivation in 1880, and that during the years 1881, 1882, and 1883 the same has been cultivated, and has been occupied by defendants Van Dorn and Lashus. Its rental value per annum is the sum of $3.00 per acre for the years during which the same was tilled for the tillable land. Prior to 1881 no proof as to its rental value was offered, and no finding can be made thereon.

6. No. 31–34, Allen W. Hawley, 60 acres, N. W. S. E. & N. ½ S. W. S. E.

H. O. Snow, 5 acres, E. ½ S. W., S. W. S. E., 19, 10, 7.
S. Arthur, 5 acres, W. ½ " " " " " "
Geo. Warder, 10 acres, S. E. S, W. S. E., " " "

This land I find is cultivated. I am unable to find from the evidence the actual rents received by each of the above-named defendants.

The rental value of said tract and each subdivision thereof is and has been at the rate of $3.00 per acre. There is no proof of the rental value as uncultivated prairie land.

Sixth.

VI. What are the rights of the claimants and Giles under the occupying claimants' law, if any, and also under the rules of equity?

Answer. I find as to the premises tracts No. 1, Owen and Oakley; No. 2, S. W. Little; No. 3, Martha Alexander; No. 4, A. P. S. Stuart, as hereinbefore described, being the several premises with the buildings thereon known as the Turner, May, Trickey, and Red-
828 ford buildings. These lots, at the time of the death of Jacob Dawson, were occupied by him. On or about the 27th day of April, 1870, Edith J. Dawson, covenanting to be the owner in fee-simple of all of the W. ½ of lot 3 and lots 4, 5, and 6 of block 54 in Lincoln, by her general warranty deed (which in terms purported to convey the fee-simple of said lots) conveyed the said lots to one Aldus Cody in consideration of the sum of $10,000.00, which said sum was the then full value of the fee-simple title to said lots; that said Cody thereupon at once went into possession of said premises and erected thereon three of the above-named buildings, viz., the Redford, Trickey, and Turner buildings, all of which were erected in 1871. The May building was erected and completed May 1st, 1878, by S. W. Little.

a. I find further as to the Redford tract, being west one-half of lot 3 and 9 and $\frac{31}{100}$ feet off the east side of lot 4, in block 54, that A. P. S. Stuart now holds and has claimed the same under the conveyances under the said Editha J. Dawson's said conveyance, as I find from and appears from the pleadings; that said Cody was the immediate grantee of said Editha J. Dawson; that said Stuart purchased said premises from one Sherwin, a remote grantee of said Cody, on the 14th day of October, 1881, and took from said Sherwin a quit-claim deed to said premises; that at the time of his said pur-

chase from said Sherwin the said Stuart had constructive notice of the said Giles title and had actual notice that said Giles was then asserting his title in the courts under the said Jacob Dawson's will.

b. I find, as to the Trickey property, owned by Martha Alexander, being 15 and $\frac{63}{100}$ feet off the west side of lot 4 and 6 and $\frac{25}{100}$ feet off of the east side of lot 5, in block 54, Lincoln, that from the pleadings the said Martha Alexander now holds and claims the same through conveyances under the said Editha J. Dawson, and
829 that Aldus Cody was Editha J. Dawson's immediate grantee, as above found.

It does not appear that said Martha Alexander ever had more than constructive notice of the terms of Jacob Dawson's will as given by the record and probate thereof in Lancaster county thereof.

c. I find as to the Turner property, Owen and Oakley, being 18 feet and 9½ inches off of the west side of lot 5 and 8 inches off of the east side of lot 6, in block 54, Lincoln, I find from the pleadings that Owen and Oakley, defendants herein, now hold and have claimed the same under conveyances under and through the said Editha J. Dawson's said conveyance to Cody (the immediate grantee of said Editha J. Dawson), as above found from the pleadings. I find that said Owen and Oakley purchased said premises from one Bacon, a remote grantee of said Cody, as from the pleadings so found, on the 29th day of October, 1880, and that they took from said Bacon a quit-claim deed to said premises, which quit-claim contained the following clause: "This deed is intended to quit-claim all the right, title, and interest derived from deed from W. W. Wilson, dated April 19th, 1875." That at the time of the said purchase from said Bacon the said Owen and Oakley had constructive notice of the said Giles' title, and had actual notice that said Giles was then claiming title under the said Jacob Dawson's will.

d. As to the May property, being lot 6, block 54, except 8 inches off the east side thereof, I find from the pleadings herein that S. W. Little now holds and has claimed said premises through conveyances under Editha J. Dawson's conveyance to said Aldus Cody, the immediate grantee of Editha J. Dawson. It does not appear that said S. W. Little ever had more than constructive notice of the terms *thereof* of said Jacob Dawson's will as given by the record
830 and probate thereof in Lancaster county, Nebraska.

e. As to lots 1–5 & 6, block 32, Dawson's addition to South Lincoln, I find that about April '29, 1870, Editha J. Dawson, covenanting to be the owner, in fee-simple, of all block 32, in Dawson's addition to South Lincoln, by her general warranty deed of last above date, conveyed the said block to one Aldus Cody (the said deed in terms purported to convey the fee-simple of said block to said Cody) for an expressed consideration of $1,134.00.

Lot 1.—I find from the pleadings that one M. B. Cheeney now holds and has claimed lot 1 in said block 32 through conveyances under said Cody, Editha J. Dawson's immediate grantee, as above found.

f. Lots 5 & 6.—I find from the pleadings that one Samuel Henderson holds and claims lots 5 & 6, in block 32 through conveyances

under said Cody, the immediate grantee of said Editha J. Dawson. I do not find that either the said M. B. Cheeney or the said Samuel Henderson had any other than constructive notice of the terms of the said Jacob Dawson's will.

g. Lot 6, block 38.—As to lot 6, in block 38, Dawson's addition to South Lincoln, I find that on or about February 1st, 1870, said Editha J. Dawson, covenanting to be the owner in fee of lots 4, 5, and 6, in block 38, in Dawson's addition to South Lincoln, by her general warranty deed of that date, conveyed all of said lots to one L. W. Billingsley, said conveyance in terms purporting to convey the fee-simple thereof to said Billingsley for the expressed consideration in said deed of $265.00. I find from the pleadings that O. P. Austin now holds and has claimed said lot 6, in block 38, through conveyances under said Billingsley, the immediate grantee of said Editha J. Dawson. I do not find that said O. P. Austin had any other than the constructive notice given by the probate and record thereof in Lancaster county of the terms of said Jacob Dawson's will.

831 *h.* Thomas Woods' lot, lot 12, block 41.—I find that Editha J. Dawson, about the 15th day of March, 1870, covenanting to be the owner in fee-simple of block 41, in Dawson's addition to South Lincoln, by her general warranty deed of that date, conveyed all of said block to one Paren England. Said conveyance in terms purported to convey the fee-simple title thereof to said England for an expressed consideration of $1,480.00. I find from the pleadings that Thomas Woods now holds and has claimed said lot 12, in block 41, through conveyances under said England, the immediate grantee of Editha J. Dawson. I do not find that said Thomas Woods had any — notice of the terms of Jacob Dawson's will than constructive notice thereof as given by the probate and record thereof in Lancaster county, Nebraska.

j. Van Dorn and Lashus, Nos. 29, 30.—I find that Editha J. Dawson, about the 25th day of December, 1876, covenant*ing* to be the owner in fee of the S. E. ¼ S E. ¼ sec. 35, T. 10, range 6, and that she on said day, by her general warranty deed, conveyed said premises to William J. Van Dorn and G. W. Lashus, which said deed purported in terms to convey and warrant the fee-simple of said lands to said Van Dorn and Lashus in consideration of the sum of $1,600.00, which was then the value of the fee of said lands. I find that the said Van Vorn and Lashus now hold and have claimed said lands under said conveyances as the immediate grantee of said Editha J. Dawson. I find that said Van Dorn and Lashus had no actual notice of the terms of the said Jacob Dawson's will, or any other notice thereof than that given by the probate and record thereof in said county.

k. Nos. 31–34, Allen W. Hawley *et al.*, W. ½ S. E. ¼, sec. 19, T. 10, R. 7 E.—I find that about April 1st, 1877, Editha J. Dawson,
832 covenanting to be the owner in fee-simple of the W. ½ S. E. ¼, sec. 19, T. 10, R. 7 E., by her general warranty deed of that date, conveyed said land to the Union Mutual Life Insurance Company of Maine, which said deed purported in terms to convey the

fee-simple of said land. I find also that the said Allen W. Hawley took title to said land under said life insurance company by a quit-claim deed supposing and believing that he took the fee title except as against a certain tax deed which was cancelled by proceedings through the courts. I find that Allen W. Hawley had no other notice of the terms of Jacob Dawson's will than that given by the probate and record thereof in said county, and believed his title to be the perfect legal title. I find that George Warder, as to 10 acres, [and] H. D. Snow and S. Arthur, each as to 5 acres, as hereinbefore described, hold and claim under said Hawley, and that said Hawley holds and claims 60 acres thereof.

1. As to the other tracts of land and lots named in said decree no evidence was offered to me, and as to such other tracts no finding can be made responsive to the 6th finding required.

m. I further find that Editha J. Dawson's only claim, right, or interest in said estate was through and under the will of said Jacob Dawson, deceased, as is found and appears from the pleadings herein.

n. I find that at the time of the termination of the life estate as found by the court in said decree said above-described premises were severally in the quiet possession of said several defendants or their immediate grantors, and from the pleadings as remote grantees of Editha J. Dawson under her conveyances above found and referred to under a claim of title in fee-simple to said several tracts as appears from the pleadings herein.

o. I find that in this proceeding said several claimants as
833 to the said several tracts are respectively in equity to be compensated for the improvements of a permanent and lasting character by them or by their grantors put upon said premises to the amount of their present value of such improvements as hereinbefore severally found, less the rents, issues, and profits of said premises from and after the date of said Giles' title accrued—that is to say, as to said—

I. S. W. Little lot.—The amount of his compensation for improvements should be the sum of $4,300.00.

He should be charged with the rents, issues, and profits of said premises from and after June 13th, 1880, to December 31st, 1882, being the sum of $3,812.50.

II. As to the Owen and Oakley lot:

Owen and Oakley should be allowed as compensation for the improvements (the Turner building proper) put upon said lot by their grantors the value thereof, being $3,100.00,

They should be charged with the rents, issues, and profits of said premises by them received and by their grantor received from June 13th, 1880, to December 31st, 1882, being $3,216.82, of which sum $2,747.00 — rents received by them, and $469.12 by Bacon, their immediate grantor.

III. As to the Martha Alexander lot:

Martha Alexander should be allowed as her compensation for the improvement placed upon said lot by her immediate grantor the value thereof, being $2,600.00.

She should be charged with the rents, issues, and profits of said premises by her received from June 13th, 1880, to December 31st, 1882, being $2,602.25, less $158.00, delinquent rents collected by the receiver, net $2,444.25.

IV. As to the A. P. S. Stuart lot:

The said A. P. S. Stuart should be allowed as his compensation for the improvement placed upon the said lot by his immediate remote grantor the value thereof, being $3,350.00.

834 He should be charged with the rents, issues, and profits of said premises by him received or received by Sherwin, his grantor, *received* from and after June 13th, 1880, being as follows:

Received by Sherwin	$1,864 00
Received by A. P. S. Stuart	339 00
	$2,203 00

That, as the receiver has collected of rents accrued prior to December, 1882, and since Stuart's claim of title accrued, and since January 1st, 1883, Stuart should *be* from that fund be paid fully to the amount thereof, $1,147.00.

V. As to the Van Dorn and Lashus land:

I find that the defendants, Van Dorn and Lashus, should be allowed as their compensation for the improvements placed upon said lands by them the value thereof, $220.00.

They should be charged with rental value of said lands for the years 1881, 1882, and 1883, at $3.00 per acre per annum, $360.

VI. As to the Allen W. Hawley *et al.* tract:

I find that Allen W. Hawley should be compensated for the improvements put thereon by himself and his grantors to the amount of the value thereof, being $740.00.

That he should be charged with the rental value of said lands from June 13th, 1880, at the rate of $3.00 per acre per annum, $840.00.

VII. I find that the following-named defendants should be compensated for improvements by them or their several grantors placed upon the several lots to the amount of the value thereof, viz:

Samuel Henderson, lots 5 & 6, block 32, $550.00.

M. B. Cheeney, lot 1, block 32, $500.00.

O. P. Austin, lot 6, block 38, $350.00.

Thomas Woods, lot 12, block 41, $450.00.

835 They should severally in like manner be charged with the rental value of said premises from June 13th, 1880; but no proof having been heretofore made, the amount of such charges cannot now be made.

p. As to the taxes assessed against said premises since June 13th, 1880, I find that the taxes for the several years should be apportioned *pro rata* between the said Giles and the said several claimants with reference to said several improvements and the lots or lands without such improvements.

Under the findings of facts above written, and under the occupy-

ing claimant laws of the State of Nebraska, the rights of the said Giles and the said several defendants are as follows:

I. The said several claimants are respectively entitled to be fully paid the value of all lasting and valuable improvements made upon the said several tracts of said several claimants, or by those under *those* they claim, and also all taxes by them severally paid upon said several tracts of land which were assessed since June 13th, 1880, with interest thereon at the same rate provided by law for delinquent taxes.

II. The said Giles is entitled to recover against the said several improvements the net annual value of the rents, and profits which the said occupants have severally received after having received notice of the said Giles' title by service of process in the said suit of Giles against said several claimants, against whom such suits were brought in this court for rents and profits, and as against the others of such occupants from the date of their original petition in the district court of Lancaster county, Nebraska.

III. That said Giles is under said occupying claimant law to demand and receive from said several occupants of said real
836 estate the value of said several tracts without improvements upon conveyance of said several tracts to said several occupants, or at his election he may pay into court the balance, if any found due, to any one of said several occupants, within such times as the court may direct, and take such tracts with the improvements.

IV. The said Giles will also be entitled to a judgment in his favor for any balance of the rents and profits due him from any occupant over the value of such improvements.

V. In case said Giles shall neglect to make his election to take said real estate with the improvements, or to convey the same to the said occupants within such time as the court may direct, then such several occupants may pay into the court or to Giles the value of said real estate without improvements, and take a decree for the same as against said Giles.

LINCOLN, NEBRASKA, *November 10th*, 1883.

And now, having fully complied with the directions given me in and by said decree, the above and foregoing report is respectfully submitted.

WILLIAM R. KELLY,
Special Master.

Upon the back of said master's report appear endorsements in words and figures following, to wit: No. 202, F. Little *et al. vs.* Giles *et al.* Giles *vs.* Little *et al.* Report of special master. Filed Nov. 12, 1883. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 17th day of November, 1883, exceptions to report were filed in said case, which said exceptions are in the words and figures following, to wit:

In the United States Circuit Court, District of Nebraska. In Equity.

837 S. W. LITTLE *et al.*
vs.
EZEKIEL GILES, L. C. BURR, H. H. WHEELER, MINNIE S. DAWSON, CARLTON DAWSON, by J. M. Woolworth, their guardian *ad litem*, impleaded with Albert L. Dawson, William R. Dawson, Sarah H. Dawson, A. A. Kniceley, William A. Goodin, and Melita C. D. Tillman. } Original Bill.

EZEKIEL GILES
vs.
S. W. LITTLE; D. B. ALEXANDER and MARTHA, His Wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhinney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arthur, Jacob Freedman, O. P. Austin, Sarah A. Gable, Samuel Aughey, Clarinda A. Bumstead, Martha Snowden, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney; Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased; Guy A. Barnum, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney. } Cross-bill.

Exceptions taken by Ezekiel Giles, one of the defendants in the said original bill, and plaintiff in the cross-bill, to the report of William R. Kelly, the special master to whom these causes stand referred by the decree made therein on the 14th day of June, 1883, and which report was filed in this court on the 12th day of November, 1883.

First exception. For that the said master, in and by his said report, has found the value of the improvements upon the parcel of land designated by him as numbered one, and in his said report described as claimed by the plaintiffs in said original bill,
838 Owen and Oakley, being eighteen feet and nine and one-half inches off the west side of lot five and eight inches off the east side of lot six, in block fifty-four, in the city of Lincoln, to be the sum of thirty-one hundred dollars, whereas he should have found the same to be twenty-five hundred and thirty dollars and fifty cents.

Second exception. For that the said master has in and by his said report found that the warehouse erected on the last above-described premises, erected thereon by one Turner, is temporary, whereas he should have found the same to be permanent and a part of the realty.

Third exception. For that the said master in and by his said report has found the value of the improvements upon the parcel of

land designated by him as number two, and in his said report described, as claimed by the plaintiff in the original bill, S. W. Little, as lot six in said block, except eight inches off the east side thereof, to be four thousand and three hundred dollars, whereas he should have found the same to be four thousand and eighty-one dollars and seventy cents.

Fourth exception. For that the said master in and by his said report has found the value of the improvements upon the parcel of land designated by him as number three, and claimed by Martha Alexander, and described as fifteen and sixty-three hundredths feet off the west side of lot four and six and $\frac{25}{100}$ feet off the east side of lot five in said block as twenty-six hundred dollars, whereas he should have found the same to be twenty-two hundred and twelve dollars and fifty cents.

Fifth exception. For that the said master in and by his said report has found the value of the improvements upon the parcel of land designated by him as number four, claimed by the plaintiff,

A. P. S. Stuart, being the west half of lot three and nine and
839 $\frac{31}{100}$ feet off the east side of lot four, to be three thousand three hundred and fifty dollars, whereas it should have been twenty-seven hundred and thirty-five dollars and forty-seven cents.

Sixth exception. For that the said master has found the rental value of the said parcel of land designated by him as number two aforesaid, for the buildings thereon, to be two hundred and fifty dollars per annum, whereas he should have found the rental value of the said parcel of land to be eight hundred dollars per annum.

Seventh exception. For that the said master in and by his said report has found that the rental value of the parcel of land designated by him as number four aforesaid, for the buildings thereon, to be two hundred and twenty-five dollars per annum, whereas he should have found the rental value of said lot without such buildings to be eight hundred dollars per annum.

Eighth exception. For that the said master in and by his said report has found the rental value of the parcel of land designated by him as number one, for the buildings thereon, to be two hundred dollars per annum, whereas he should have found the rental value of said ground without said buildings to be eight hundred dollars per annum.

Ninth exception. For that the said master in and by his said report has found that the rental value of the lot designated by him as number three aforesaid, for the buildings thereon, to be two hundred and twenty-five dollars per annum, whereas he should have found the rental value of said lot without the improvements to be eight hundred dollars per annum.

Tenth exception. For that the said master in and by his said report has found that the said Stuart holds title to the said lot number four by deed from Mrs. Editha Dawson, whereas he should have found that the said Stuart has shown no title to the said lot derived to him by deed from the said Mrs. Dawson or otherwise.

840 Eleventh exception. For that the said master in and by his said report has found that the said Stuart holding by

deed from one Shermin, the said Sherwin was the remote grantee of Aldus Cody, whereas he should have found that the said Stuart has shown no title derived to him by deed from the said Sherwin from the said Cody or otherwise.

Twelfth exception. For that the said master in and by his said report has found that the said Alexander holds title to the said lot numbered three by deeds showing conveyances from the said Mrs. Edith Dawson, whereas he should have found that the said Alexander has shown no title to the said lot derived to him from the said Mrs. Dawson or otherwise.

Thirteenth exception. For that the said master in and by his said report has found that the said Alexander had only a constructive notice of the will of the said Jacob Dawson, deceased, or the terms or contents thereof, whereas he should have found that the said Alexander had actual notice thereof when she took her deed to said lot.

Fourteenth exception. For that the said master in and by his said report has found that the said defendants, Owen and Oakley, held title to said lot number one under conveyances through and under the said Mrs. Dawson, whereas he should have held that they have shown no title to the said lot derived to them from the said Mrs. Dawson or otherwise.

Fifteenth exception. For that the said master in and by his said report has found that the said Bacon, in said report mentioned, was the remote grantee of said Cody of the said lot number one, whereas he should have found that the said Bacon had not title to the said lot derived to him from Cody or otherwise.

Sixteenth exception. For that the said master in and by his said report has found that the said Little holds and claims said lot number two through conveyances of the title thereto derived
841 to him from the said Mrs. Dawson and her conveyance to said Cody, whereas he should have found that the said Little had no title whatever to the said lot derived to him as aforesaid or otherwise.

Seventeenth exception. For that the said master in and by his said report has found that the said Henderson holds and claims title to lots five and six, in block thirty-two, through conveyances under the said Mrs. Dawson, whereas he should have found that the said Henderson had no title to the said lots derived to him as aforesaid or otherwise.

Eighteenth exception. For that the said master in and by his said report has found that the said Cheeney holds and claims title to lot one, in block thirty-two, through conveyances under the said Mrs. Dawson, whereas he should have found that he had no title to said lot derived to him as aforesaid or otherwise.

Nineteenth exception. For that the said master in and by his said report has found that the said Cheeney and Henderson had not more than constructive notice of the said will or the contents thereof, whereas he should have found that they had actual notice of the same when they severally took deeds to the said lots claimed by them.

Twentieth exception. For that the said master in and by his said report has found that the said Austin holds and claims title to lot six, in block thirty-eight, through conveyances from one Billingsley, whereas he should have found that the said Austin had no title whatever to said lots derived to him as aforesaid or otherwise.

Twenty-first exception. For that the said master in and by his said report has found that the said Thomas Woods holds and claims title to lot twelve, in block forty-one, by conveyances under one England, whereas he should have found that the said Woods has no title to said lot derived to him as aforesaid or otherwise.

Twenty-second exception. For that the said master in and
842 by his said report has found that the said Woods had not more than constructive notice of the said will or the contents thereof, whereas he should have found that he had actual notice of the same when he took a deed to said lot.

Twenty-third exception. For that the said master in and by his said report has found that in this proceeding the several claimants, as to the said several tracts of land, ought respectively to be compensated for the improvements of a permanent and lasting character by them or their grantors put upon said premises to the amount of the present value of such improvements, less the rents, issues, and profits thereof from the date the said Giles' title accrued, whereas he should have found that the said several claimants are not, nor is either or any of them, entitled to be paid or allowed any compensation or allowance therefor.

Twenty-fourth exception. For that the said master in and by his report has found that the taxes assessed against said premises since June 13th, 1880, should be apportioned *pro rata* between the said Giles and the said several claimants with reference to their said several improvements and the lots or lands without such improvements, whereas he should have found that the said claimants are not entitled to be paid or allowed any part of the said taxes.

Twenty-fifth exception. For that the said master in and by his said report has found that the said Giles is under the occupying claimant law, referred to by said master in his said report, entitled only to demand and receive from the said several occupants the value of said several tracts without improvements upon conveyance of said several tracts to them, or at his election to pay into court the balance found due to any one of said occupants, and to take such tracts with the improvements, whereas he should have found that the said Giles is entitled to all and every the said several tracts
without regard to any of the claims of the said claimants on
843 account of said improvements or taxes.

Twenty-sixth exception. For that the said master in and by his said report has found that the said Giles will also be entitled to a judgment for any balance of rents or profits due him from any occupant over the value of said improvements, whereas he should have found that the said Giles is entitled to recover all of the rents and profits of the said premises without regard to the improvements thereon.

Twenty-seventh exception. For that the said master in and by

his said report has found that in case said Giles shall neglect to make his election to take said real estate with the improvements, or to convey the same to said occupants within such time as the court may direct, then such several occupants may pay into court or to said Giles the value of said real estate without improvements, and take a decree for the same as against said Giles, whereas he should have found that the said Giles was entitled to have and recover the possession of the said premises from and against the said defendants, each and every of them, in the said cross-bill, and to be quieted of his title therein.

Twenty-eighth exception. For that the said master in and by his said report has found that at the termination of the life estate of the said Mrs. Dawson, as found by the court in said decree, said above-described premises were severally in the quiet possession of the said several defendants, or their immediate grantors, and the remote grantees of Edith J. Dawson, under her conveyances under a claim of title in fee-simple to said several tracts, whereas he should have found that the said several defendants in the said cross-bill, any or either of them, have not any right, title, or interest in the said several tracts of land respectively claimed by them [as] derived to them from the said Edith J. Dawson by mediate or
844 immediate conveyances by her to them or otherwise.

Twenty-ninth exception. For that the said master in and by his said report has found that the said Giles is entitled on the one side to certain rents and profits, and the said defendants are entitled, on the other side, to certain improvements, taxes, and expenditures, whereas he ought to have found that the said Giles is entitled to the sum of one thousand dollars, that being the value of the buildings standing upon certain of the premises here in question at the death of the said Jacob Dawson, in addition to the said rents and profits.

Thirtieth exception. For that the said master in and by his said report has found that the said Cheeney, Henderson, and Woods, respectively, are entitled to be allowed, and the said master has allowed to them, the value of the improvements made by them on the said several parcels of claimed by them respectively, whereas he should have found that they are not entitled to any allowance whatever on account of said premises.

Thirty-first exception. For that the said master in and by his said report has found that the said several defendants in the cross-bill—that is to say, said Owen and Oakley, Little, Alexander, and Stuart—are entitled to and ought to be allowed the value of the improvements upon the several tracts of land claimed by them respectively, without regard to the amount of the rents and profits received by them from the said lots of land, whereas he should have found that neither of them is entitled to any allowance on account of said improvements upon the lot claimed by him, or, if entitled to any, then not beyond the sum which he has received from the rents and profits thereof.

Thirty-second exception. For that the said master in and by
845 his said report has not found that the said Giles was entitled to

a proper and reasonable interest upon the rental value of said premises and the value of said premises found due upon said premises each year.

Thirty-third exception. For that the said master in and by his said report has taken into consideration matters and things of which were not referred to him.

Wherefore the said Ezekiel Giles doth except to the said report, and appeals therefrom to the judgment of the court.

L. C. BURR,
Sol. for Exceptant.

J. M. WOOLWORTH,
Of Counsel.

Upon the back of said exceptions appear endorsements in words and figures following, to wit: No. 202, F. In U. S. circ't c't. Little *vs.* Giles and Giles *vs.* Little. Exceptions to report. L. C. Burr, sol. for excep. J. M. Woolworth, of counsel. Filed Nov. 17, 1883. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 8th day of December, 1883, exceptions to report of special master were filed in said case, which said exceptions are in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

SAMUEL W. LITTLE *et al.*
vs.
EZEKIEL GILES *et al.*
} Original Bill.

EZEKIEL GILES *et al.*
vs.
SAMUEL W. LITTLE *et al.*
} Cross-bill.

Exceptions severally taken by Owen and Oakley, Martha Alexander, S. W. Little, A. P. S. Stewart, and W. J. Van Dorn and G. W. Lashus, being complainants, with others, in the original bill and defendants, with others, in the cross-bill, to the report made by W. R. Kelly, Esquire, special master of this court, to whom this cause stands referred, in pursuance of the decree of this
846 court, bearing date June 14th, 1883.

Exceptions taken by Owen and Oakley.

First exception. For that the said master hath in and by his report certified the value of the permanent improvements on the premises, "eighteen feet and nine and one-half inches off the west side of lot five and eight inches off the east side of lot six, block fifty-four, in Lincoln, to be $3,100.00, whereas the said master ought to have certified and found the value of the permanent improvements on the said last-described premises to be $4,500.00.

Second exception. For that the said master hath in and by his report certified the value of the said lot, "eighteen feet and nine and

one-half inches off" "the west side of lot five and eight inches off the east side of lot six," "block fifty-four, in Lincoln," to be $4,387.50 without the improvements, whereas the said master ought to have certified and found the value of said lot without the improvements to be $3,900.00.

Third exception. For that the said master hath in and by his said report certified that in finding the values of said buildings—that is to say, the lasting and valuable improvements upon the several premises in question in this cause—he hath based his findings upon the testimony of the witnesses Roberts, Hiltner, and Cook alone as to the values thereof as the best evidence thereof, and that the testimony of all the other witnesses as to the values of the said buildings he did not consider, and it doth appear by the abstract and report of the testimony brought and produced before the said master, and now returned here with said report, that this defendant produced the following-named witnesses, who gave competent and material testimony as to the values of said buildings on the premises.

Fourth exception. For that the said master hath in and by his said report certified and found that in this proceeding
847 these several complainants as to said several tracts are, respectively, in equity entitled to be compensated for the improvements of a permanent and lasting character by them or their grantors put upon said premises to the amount of the present value of said improvements, as thereinbefore severally found, less the rents, issues, and profits of said premises, from and after the date said Giles' title thereto accrued, and that Owen and Oakley should be allowed as compensation for the improvements the Turner building property put upon said lot by their grantors, the value thereof being $3,100.00. They should be charged with the rents, issues, and profits of said premises by them received and by their grantor received from June 13th, 1880, to December 31st, 1882, being $3,215.82, of which sum $2,747.00 [were for] rents received by them and $469.12 by Bacon, their immediate grantor, whereas the said master ought to have found and certified that in this proceeding these several claimants as to said several tracts are, respectively, entitled to compensation for the improvements of a permanent and lasting character by them or by their grantors put upon said premises to the amount of the present value of such improvements, less the rental value of said several lots or parcels of ground upon which said improvements have stood, and should have found and reported that Owen and Oakley should be allowed in equity, as compensation for said improvements put on said lot by their grantors, the value thereof, the sum of $4,500.00, and that they should be charged with the rental value of said lot from June 13th, 1880, to December 31st, 1882, the sum of $509.00.

Fifth exception. For that the said master hath in and by his said report certified that under the occupying claimants' law of the State of Nebraska the said Giles is entitled to recover against the value of said several improvements the net annual value of the rents and profits which the said occupants have severally received after
848 having received notice of the said Giles' title by service of process in the said suits of Giles against said several claim-

ants, against whom such suits were brought in this court for rents and profits, and as against the others of such occupants, from the date of the filing of their original petition in the district court of Lancaster county, Nebraska, whereas the said master ought to hthe found and certified that said Giles, under the occupying claimants' laws of Nebraska, is entitled to rccover against the value of said several improvements the net annual value of the rents and profits of the said premises without the improvements, and that he is entitled to recover rents and profits from the date only of the service of the subpœna issued upon the cross-bill of Ezekiel Giles upon said several claimants, or from the date of the appearance of the several claimants to said cross-bill.

Sixth exception. For that the said master hath in and by his said report certified and found that under the occupying claimants' law of Nebraska said Giles will also be entitled to a judgment in his favor for any balance of rents and profits due him from any occupants over the value of such improvements, whereas said master ought to have certified and found that under the occupying claimants' laws of Nebraska said Giles will not be entitled to any judgment in his favor against any of said claimants of said lands unless the rental value of said tracts without the improvements after the date of the filing of the cross-bill herein by said Ezekiel Giles, and prior to the 31st day of December, 1882, exceed the value of the improvements of such occupant, and that said Giles will not be entitled to any judgment in his favor, except the value of the buildings and improvements of such occupant is less than the actual value of the rents and profits of said premises while the same have been occupied by him after the filing of the cross-bill herein, and prior to December 31st, 1882.

849 Exceptions taken by S. W. Little.

First exception. For that the said master hath in and by his said report certified the value of the permanent improvements on the premises, lot six (6), block fifty-four (54), except eight (8) inches off the east side thereof, to be $4,300.00, whereas the said master ought to have certified and found the value of the permanent improvements on the said premises to be five thousand five hundred dollars (5,500.00).

Second exception. For that the said master hath in and by his said report certified the value of the said lot six (6), block fifty-four (54), Lincoln, except eight (8) inches off of the east side thereof, to be $5,475.00, five thousand four hundred and seventy-five dollars, without the improvements, whereas the said master ought to have found and certified the value of said lot without the improvements to be $4,930.00, four thousand nine hundred and thirty dollars.

Third exception. For that the said master hath in and by his said report certified that in finding the values of said buildings—that is to say, the lasting and valuable improvements upon the several premises in question in this case—he hath based his findings upon the testimony of the witnesses Roberts, Hiltner, and Cook alone as to the values thereof, as the best evidence thereof, and that the testi-

mony of the other witnesses as to the values of the said buildings he did not consider; and it doth appear by the abstract and report of the testimony brought in and produced before the said master, and now returned here with said report, that this defendant produced the following-named witnesses, who gave competent and material testimony as to the values of said buildings on the said premises.

Fourth exception. For that the said master hath in and by his said report certified and found that in this proceeding these several complainants as to said several tracts of land are re-
850 spectively, in equity entitled to be compensated for the improvements of a permanent and lasting character by them or their grantors put upon said premises to the amount of the present value of said improvements, as therein before severally found, less the rents, issues, and profits of said premises from and after the date said Giles' title thereto accrued, and that S. W. Little should be allowed as compensation for the improvements—the May building—put upon said lot by his grantors, the value thereof, being $4,3000.00, and that he should be charged with the rents, issues, and profits of said premise by him received and by his grantors received from June 13th, 1880, to December 31st, 1882, being $3,812.50, whereas the said master ought to have found and certified that in this proceeding these several claimants as to said several tracts of land are respectively entitled to be compensated for the improvements of a permanent and lasting character by them or their grantors put upon said premises to the amount of the present value of such improvements, less the rental value of the said lots or parcels of ground upon which said improvements have stood, and should have found and reported that S. W. Little should be allowed in equity, as compensation for said improvements put upon said lot by him, the value thereof, the sum of $5,500.00, and that he should be charged with the rental value of said lot from June 13th, 1880, to December 31st, 1882, the sum of $636.00.

Fifth exception. For that the said master hath in and by his said report certified that under the occupying claimants' laws of the State of Nebraska the said Giles is entitled to recover against the value of said several improvements the net annual value of the rents and profits which the said occupants have severally received after having received notice of the said Giles' title by service of process in the said suits of Giles against said several claimants
851 against whom such suits were brought in this court for rents and profits, and as against the others of such occupants from the date of the filing of their original petition in the district court of Lancaster County, Nebraska, whereas the said master ought to have certified and found that said Giles, under the occupying claimants' laws of Nebraska, is entitled to recover, against the value of said several improvements, the net annual value of the rent sand profits of the said premises without the improvements, and that he is entitled to recover rents and profits only from the date of the service of the subpœna issued upon the cross-bill of Ezekiel Giles upon said several claimants, or from the date of the appearance of the several complainants to said cross-bill.

Sixth exception. For that the said master hath in and by his said report certified and found that under the occupying claimants' laws of Nebraska said Giles will also be entitled to a judgment in his favor for any balance of rents and profits due him from any occupants over the value of such improvements, whereas the master ought to have certified and found that under the occupying claimants' laws of Nebraska said Giles will not be entitled to any judgment in his favor against any of said claimants of said lands unless the rental value of said tract without the improvements, after the date of the filing of the cross-bill herein by said Ezekiel Giles, and prior to the 31st day of December, 1882, exceed the value of the improvements of such occupant, and that said Giles will not be entitled to any judgment in his favor, except the value of the buildings and improvements of such occupant is less than the actual value of the rents and profits of said premises while the same have been occupied by him after the filing of the cross-bill herein, and prior to the 31st day of December, 1882.

852 Exceptions taken by Martha Alexander

First exception. For that the said master hath in and by his said report certified the value of the permanent improvements on the premises, 15.63, fifteen and sixty-three one-hundredths, feet off the west side of lot four, and 6.25, six and twenty-five one-hundredths, feet off the east side of lot five, in block fifty-four (54), Lincoln, to be $2,600.00, whereas the said master ought to have found and certified the value of the permanent improvements on the said last-described premises to be $4,000.00.

Second exception. For that the said master hath in and by his said report certified the value of the said lot 15.63, fifteen and sixty-three hundredths, feet off the west side of lot five (5) and 6.25, six and twenty-five hundredths, off the east side of lot five (5), block fifty-four (54), Lincoln, to be $4,923.00, without the improvements, whereas the said master ought to have certified and found the value of said lot without the improvements to be $4,400.00.

Third exception. For that the said master hath in and by his said report certified that in finding the values of said buildings—that is to say, the lasting and valuable improvements upon the several premises in question in this cause—he hath based his findings upon the testimony of the witnesses Roberts, Hiltner, and Cook alone as to the values thereof as the best evidence thereof, and that the testimony of the other witnesses as to the value of the said buildings he did not consider; and it doth appear by the abstract and report of the testimony brought in and produced before the said master, and now returned here with said report, that this defendant produced the following-named witnesses, who gave competent and material testimony as to the values of said buildings on the said premises.

853 Fourth exception. For that the said master hath in and by his said report certified and found that in this proceeding these several complainants as to said several tracts are, respectively, in equity, entitled to be compensated for the improvements of a per-

manent and lasting character by them or their grantors put upon said premises to the amount of the present value of said improvements, as therein before severally found, less the rents, issues, and profits of said premises from and after the date said Giles' title thereto accrued, and that Martha Alexander should be allowed as compensation for the improvements—the Trickey building—put upon said lot by her grantors, the value thereof, being $2,600.00; and that she should be charged with the rents, issues, and profits of said premises by her received and by her grantors received from June 13th, 1880, to December 31st, 1832, being $2,444.25, whereas the said master ought to have found and certified that in this proceeding these several claimants as to said several tracts are respectively entitled to be compensated for the improvements of a permanent and lasting character by them or their grantors put upon said premises to the amount of the present value of such improvement, less the rental value of the said several lots or parcels of ground upon which said improvements have stood, and should have found and reported that Martha Alexander should have been allowed, in equity, as compensation for said improvements put upon said lot by her grantor the value thereof, the sum of $4,000.00, and that she should be charged with the rental value of said lot from June 13th, 1880, to December 31st, 1882, the sum of $509.00.

Fifth exception. For that said master hath in and by his said report certified that, under the occupying claimants' laws of the State of Nebraska, the said Giles is entitled to recover against
854 the value of the said several improvements the net annual value of the rents and profits which the said occupants have severally received after having received notice of the said Giles' title by service of process in the said suits of Giles against said several claimants against whom such suits were brought in this court for rents and profits, and as against the others of such occupants from the date of the filing of their original petition in the district court of Lancaster county, Nebraska, whereas the said master ought to have found and certified that said Giles, under the occupying claimants' laws of Nebraska, is entitled to recover against the value of said several improvements the net annual value of the rents and profits of the said premises without the improvements, and that he is entitled to recover rents and profits from the date only of the service of the subpœna issued upon the cross-bill of Ezekiel Giles upon said several claimants, or from the date of the appearance of the several claimants to said cross-bill.

Sixth exception. For that the said master hath in and by his said report certified and found that, under the occupying claimants' laws of Nebraska, said Giles will also be entitled to a judgment in his favor for any balance of rents and profits due him from said claimants over the value of such improvements, whereas the said master ought to have found and certified that, under the occupying claimants' laws of Nebraska, said Giles will not be entitled to any judgment in his favor against any of said claimants of said lands unless the rental value of said tracts without the improvements, after the date of the filing of the cross-bill herein by said Ezekiel Giles, and

prior to the 31st day of December, 1882, exceed the value of the improvements of such occupant, and that said Giles will not be
855 entitled to any judgment in his favor except the value of the buildings and improvements of such occupant is less than the actual value of the rents and profits of said premises while the same have been occupied by him after the filing of the cross-bill herein and prior to December 31st, 1882.

Exceptions taken by A. P. S. Stewart.

First exception. For that the said master hath in and by his said report certified the value of the permanent improvements on the premises, the west half of lot three (3) and nine (9) feet and thirty-one hundredths off the east side of lot four (4), block fifty-four (54), Lincoln, Nebraska, to be $3,350.00, whereas the said master ought to have certified and found the value of the permanent improvements of the said lot last described to be $4,500.00.

Second exception. For that the said master hath in and by his said report certified the value of the said lot, the west half of lot three (3) and nine and thirty-one hundredths, 9.31, feet off the east side of lot four (4), block fifty-four, Lincoln, Nebraska, to be, without the improvements, $4,907.25, four thousand nine hundred and seven dollars and twenty-five cents, whereas the said master ought to have found the value of said lot without the improvements to be $4,400.00.

Third exception. For that the said master hath in and by his said report certified that in finding the values of said buildings—that is to say, the lasting and valuable improvements upon the several premises in question in this case—he hath based his findings upon the testimony of the witnesses Roberts, Hiltner, and Cook alone as to the values thereof as the best evidence thereof, and that the testimony of the other witnesses as to the values of the said build-
856 ings he did not consider; and it doth appear by the abstract and report of the testimony brought in and produced before the master, and now returned here with said report, that this defendant produced the following-named witnesses, who gave competent and material testimony as to the values of said buildings on the said premises.

Fourth exception. For that the said master hath in and by his said report certified and found that in this proceeding these several complainants as to the said several tracts are respectively, in equity, entitled to be compensated for the improvements of a permanent and lasting character by them or their grantors put upon said premises to the amount of the present value of said improvements, as thereinbefore severally found, less the rents, issues, and profits of said premises, from and after the date said Giles' title thereto accrued, and that A. P. S. Stewart should be allowed as compensation for the improvements—the Redford building—put upon said lot by his grantors, the value thereof being $3,350.00, and that he should be charged with the rents, issues, and profits of said premises by him received and by his grantors received from June 13th, 1880, to December 31st, 1882, being $2,203.00, whereas the said master ought to have found and certified that in this proceeding these

several claimants as to said several tracts are respectively, in equity, entitled to be compensated for the improvements of a permanent and lasting nature by them or their grantors put upon said premises to the amount of the present value of such improvements, less the rental value of the said several lots or parcels of ground upon which said improvements have stood, and he should have found and reported that A. P. S. Stewart should be allowed, in equity, as compensation for said improvements put upon said lot by his grantor, the value thereof, the sum of $4,500.00, and that he should be charged with the rental value of said lot from June 13th,
857 1880, to December 31st, 1882, the sum of $509.00.

Fifth exception. For that the said master hath in and by his said report certified that under the occupying claimants' laws of the State of Nebraska the said Giles is entitled to recover against the value of the said several improvements the net annual value of the rents and profits which the said occupants have severally received after having received notice of the said Giles' title by service of process in the said suits of Giles against said several claimants, against whom such suits were brought in this court for rents and profits, and as against the others of such occupants, from the date of the filing of their original petition in the district court of Lancaster county, Nebraska, whereas the said master ought to have found and certified that said Giles, under the occupying claimants' laws of Nebraska, is entitled to recover against the value of said several improvements the net annual value of rents and profits of the said premises without the improvements, and that he is entitled to recover rents and profits only from the date of the service of the subpœna issued upon the cross-bill of Ezekiel Giles upon said several claimants, or from the date of the appearance of the several claimants to said cross-bill.

Sixth exception. For that said master hath in and by his said report certified that under the occupying claimants' laws of Nebraska said Giles will also be entitled to a judgment in his favor for any balance of rents and profits due him from said claimants over the value of such improvements, whereas the said master ought to have found and certified that under the occupying claimants' laws of Nebraska said Giles will not be entitled to any judgment in his favor against any of said claimants of said lands, unless the rental value of said tracts without the improvements, after the date
858 of the filing of the cross-bill herein by said Ezekiel Giles and prior to the 31st day of December, 1882, exceed the value of the improvements of such occupant, and that said Giles will not be entitled to any judgment in his favor, except the value of the buildings and improvements of such occupant is less than the actual value of the rents and profits of said premises while the same have been occupied by him after the filing of the cross-bill herein and prior to December 31st, 1882.

Exceptions taken by W. J. Van Dorn and G. W. Lashus.

For that the said master hath in and by his said report certified that the nursery stock now on the southeast quarter of the southeast

quarter of section thirty-five (35), township ten (10), range six (6) east, being improvements on said land, is personal property, removable from said land without any injury to the estate, whereas said master ought to have found and certified that said growing trees were lasting and valuable improvements, enhancing the value of said estate in the sum of $1,454.45, for which said Van Dorn and Lashus were entitled to compensation under the occupying claimants' law and under the rules in equity.

Wherefore the said Owen and Oakley, S. W. Little, Martha Alexander, A. P. S. Stewart, and W. J. Van Dorn and G. W. Lashus severally except to the said master's report, and humbly appeal therefrom to the judgment of this honorable court.

WALTER J. LAMB,
T. M. MARQUETTE,
N. S. HARWOOD, AND
JOHN AMES,
Sol's for Defendants.

Upon the back of said exceptions appear endorsements in words and figures following, to wit: No. 202, F. S. W. Little *et al. vs.* E. Giles *et al.* E. Giles *et al. vs.* S. W. Little. Original bill and
859 cross-bill. Exceptions to report of special master Filed Dec. 8, 1883. Elmer D. Frank, clerk. W. J. Lamb, T. M. Marquette, N. S. Harwood, and John H. Ames, sol's for defendants.

Thereupon, afterwards, to wit, on the 1st day of July, 1884, a motion to withdraw two deeds from files were filed in said case, which said motion is in words and figures following, to wit:

In the United States Circuit Court for the District of Nebraska.

GILES *vs.* LITTLE *et al.*

Comes now the said Giles and moves the said court for an order that the clerk of this court make a true copy of the original deed put in evidence by said Giles of Minnie Dawson to said Giles and the deed of said Burr and Wheeler to Carlos C. Burr, and that the said Giles may withdraw said deeds from the files of this court.

L. C. BURR,
Attorney for Giles.

Upon the back of said motion appear endorsements in words and figures following, to wit: Giles *vs.* Little. Cross-bill. Motion to withdraw two deeds from files. Filed July 1, 1884. Elmer D. Frank, clerk. L. C. Burr, for Giles.

Thereupon, afterwards, at the May term of said court, on the 1st day of July, 1884, the following proceedings were had, as appears of record on folio 433, Journal "I," of said court, to wit:

S. W. LITTLE *et al.*
vs.
EZEKIEL GILES *et al.*
} 202, F.

On motion of L. C. Burr, solicitor for the defendants, it is ordered

by the court that said defendant have leave to withdraw from the records herein certain original deeds by leaving certified copies thereof on file.

860 Thereupon, afterwards, to wit, on the 5th day of September, 1884, amendments suggested to decree were filed in said case, which said amendments are in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

EZEKIEL GILES
vs.
S. W. LITTLE *et al.*, D. B. ALEXANDER *et al.* } Original Bill.

S. W. LITTLE *et al.*
vs.
EZEKIEL GILES. } Cross-bill.

Amendments suggested by S. W. Little *et al.* to the draft of the final decree submitted this 5th day of Sept., 1884, by solicitors for Giles, complainant in cross-bill.

1st. We submit that the draft of the decree should conform to the report of the master, which is confirmed by the decree.

2nd. That the decree should be amended as to Owen and Oakley in this: that whereas said decree directs that said Giles should recover of said Owen and Oakley the sum of $741.64 *dollars*, it should be amended to conform to the finding of said master, who states the account thus: By page 25 of report he finds that said Owen and Oakley should be charged with rents the sum of $3,216.82, and be credited with the value of the improvements the sum ---- 3,100
And with taxes (p. 27) ---- 359 73

Total ---- 3,459 73

And said decree should be amended so that said Giles should be decreed to pay to said Owen and Oakley the difference to their credit, the sum of $242.91, and that they should have a lien on said premises therefor; and said decree should be amended so that said
861 Owen and Oakley are charged with the rents of said building only, as found by said report, from the 13th day of June, 1880, the date of the filing [of] said cross-bill.

3rd. That the said decree should be amended in this: that whereas by the report of the referee and master the value of the improvements placed on lot 6, block 54, by S. W. Little was found to be $4,300, said decree placed the same at 4,200, and the same should be amended in such particular.

And whereas said report states the account between S. W. Little and said premises as follows:

Value of improvements placed thereon ---- 4,300
Rents rec'd from June 13, 1880 ---- 3,812 50

Balance due Little ---- $487 50

Said decree orders judgment against said Little in the sum of $262.50, and the same should be amended so that said Little has a decree in his favor for the sum of $487.50 and a lien on the said premises therefor, and said decree should also be amended to conform to said report, and should charge said Little only with rents from June 13, 1880, the sum of $3,812.80.

4th. That the said decree should be amended in this: that whereas by the said report the value of the improvements on the Martha Alexander lot was stated and reported to be the sum of $2,600, and the amount of rents received by her to amount to the sum of $2,444.25, leaving a balance due her of the sum of $155, said decree finds due from her to said Giles the sum of $545.25, and the said decree should be amended to conform to the finding of said report, and should find her chargeable with the rents on said premises only from June 13, 1880.

5th. That said decree should also be amended touching the property of A. P. S. Stuart, whose account by said report stands thus:

862	Value of his improvements, the sum of		$3,350	
	Rents	1,864		
	"	339		
			2,203	
	Balance		1,157	
	And that he has paid taxes the sum of		571	55
	Total		1,708	55

That said decree should be amended to conform to said report, and find due said Stewart the sum of $1,708.55, and it should give him a lien on said premises therefor.

6th. That said decree should be amended as to said Hawley and made conformable to said report in this: that said Hawley, by said report, is only charged with eight hundred and forty dollars in rents and is credited with seven hundred and forty dollars for his improvements and $66.11 for taxes paid by him, with interest thereon, leaving a balance of only the sum of $33.89, whereas said decree charges him with the sum of $200.

7th. That said decree should be amended in this: that it should give each of the said respondents to the cross-bill liens on said several tracts of land upon which they have paid taxes for the amount thereof.

8th. That said decree should not charge the respondents to the cross-bill with the rents on their own money invested in the buildings, but should charge them only with a fair rental value of what belonged to the complainant in the cross-bill, the several lots, and said decree should be amended throughout in this particular; or — this be not done, it should give the several respondents credit, with interest, upon the value of their several buildings from the 14th day of Dec., 1879.

9th. That said decree should be amended so as to conform
863 to said report and state and find the values of said several lots and lands and the rental value of each without the improvements since Dec. 14, 1879.

10th. That said decree should be amended as to said several lots of Snow, Warder, Arthur, Cheeney, Austin, and Woods and others, and state their value, and should not allow any rents for the same, or, if any, not more than 7 per cent. interest on the values of said lots, and said decree should be so amended as to give each of said parties a decree for the value of their improvements as found by the master, and liens of said several lots for the same, and taxes they have severally paid thereon with interest until paid.

11th. That said decree should be amended wherein it directs that any and all of the moneys in the hands of the receiver be paid to said Giles, and he should be directed to hold the same to abide the final decision of this cause in the Supreme Court of the United States.

12th. That said decree be amended in this: where it requires any party appealing to give bond for costs.

13th. That said decree be amended wherein it allows any sum to the guardian *ad litem* as costs as unauthorized.

14th. That the following amendment be appended to said decree: And thereupon, upon the signing and filing of said decree, come the complainants in the original bill and the respondents in the cross-bill, by their attorneys, Walter J. Lamb and John H. Ames, and in open court prayed an appeal from said decree jointly to the Supreme Court of the United States, which said appeal is by the court hereupon, upon consideration of said prayer in open court, granted and allowed, and also upon the signing and filing of said decree come the following-named complainants in the original bill and respondents in the cross-bill, to wit: A. P. S. Stewart, Samuel G. Owen, and R.
864 H. Oakley, Martha Alexander, Samuel W. Little, and Allen W. Hawley, by their counsel aforesaid, and each separately and severally in open court prayed an appeal from said decree to the Supreme Court of the United States, which appeal to each of said parties severally is, upon consideration of said prayer in open court, granted and allowed. And thereupon, upon application of each of said appellants in open court at the time aforesaid, it is ordered by the court here that a supersedeas bond, with sufficient surety, to be approved in each case by the judge of this court, be given upon said joint appeal by said appellants in the sum of $2,000, and by each of said separate appellants upon his said separate appeal in the sum of $500, with condition therein written, as by statute in such case provided; and it is further ordered by the court here that upon the filing of said several bonds as aforesaid all proceedings pursuant to said decree be stayed and writs of restitution of the premises in said decree described shall be withheld during the pendency of said appeal; and it is further ordered that the receiver heretofore appointed in this cause be and remain in possession of said premises, and every — of them until otherwise ordered.

Upon the back of said amendments suggested to decree appear endorsements in words and figures following, to wit: No. 202, F. Little *et al. vs.* Giles *et al.* Giles *vs.* Little *et al.* Amendments suggested to decree by Jno. H. Ames and W. J. Lamb, respond'ts' sol. Filed Sep. 5, 1884. Elmer D. Frank, clerk.

865 Thereupon, afterwards, at the said May term of said court, on the 5th day of September, 1884, the following proceedings were had, as apears of record on folio — Journal "I," of said court to wit:

Decree.

S. W. LITTLE, SAMUEL ARBUCKLE, D. B. ALEXANDER, A. J. Sawyer, S. G. Owen, Lorenzo Assmesson, R. H. Oakley, Sarah J. Purcell, A. P. S. Stewart, Thomas R. Clark, Mary A. McElhinney, D. C. Kinsell, Hannah Selwood, Alexander C. Huestes, Allen W. Hawley, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, A. F. Lewis, Samuel Arthur, G. F. Thornton, Sarah Cummings, William H. Rundell, Jacob Freedman, O. P. Austin, J. A. Buckstaff, Mary T. McNair, George D. Camp, Wilber F. Kellogg, Elizabeth N. Chase, Sarah A. Gable, Samuel Aughey, Clarinda A. Bumstead, Elizabeth Paden, Martha E. Snowden, Thomas Woods, Joseph Hoagland, Eliza W. Pillsbury, Henry V. Hoagland, W. S. Garrison, C. L. Hooper, S. E. Story, V. E. Farmer, Josephine St. Louis, Frank J. Wassika, Ellen N. Miller, John H. Schwabold, Helen Webber, Samuel Henderson, Christian Bohlman, Joseph Richardson, Patrick Lyons, W. Sandford Gee, Allen Cogswell, M. B. Cheeney, Mary E. Maloney, Emma A. Beach, Barrett F. Loath, Francis D. Howell, L. S. Howell, Samuel D. Bacon, Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased; Jacob Freedman, Samuel T. English, Guy A. Barnum, H. C. Snow, George Warder, D. D. Muir, George W. Severance, Rody A. Prindle, Mina W. Brown, W. J. Van Dorn, and G. W. Lashus, Martha Alexander } Original Bill. 202, F.

vs.

EZEKIEL GILES, L. C. BURR, H. H. WHEELER, Albert L. Dawson, M. C. Dawson, William R. Dawson, Sarah H. Dawson, M. S. Dawson, A. A. Kniceley, William A. J. Goodwin, Melita C. D. Tillman.

866 EZEKIEL GILES
vs.
S. W. LITTLE, D. B. ALEXANDER, and MARTHA, His Wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, A. P. Stewart, Mary A. McElhinney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arthur, Jacob Freedman, O. P. Austin, Sarah A. Gable, Samuel Aughey, Clarinda A. Bumstead, Martha Snowden, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased; Guy A. Barnum, H. O. Snow, George Warden, Rody A. Prindle, Charles Hanna, Mary A. McSweeney, and Allen W. Hawley. } Cross-bill.

These causes came on further to be heard upon the report of the special master and the exceptions of the several parties thereto, and were argued by Mr. Lamb on behalf of the defendants in the cross-bill and the plaintiffs in the original bill, and by Messrs. Woolworth and Burr on behalf of Ezekiel Giles, plaintiff in the cross-bill and defendant in the original bill, and the other defendants in the original bill, and thereupon it is ordered that the several exceptions filed to the said report by the several excepting parties be, and the same are, overruled, and thereupon the court finds as follows:

1. Mrs. Editha J. Dawson was married to the said Pickering in the pleadings and the said report mentioned on the 14th of December, A. D. 1879.

2. The dates of the several deeds made by the children of the testator, Jacob Dawson, to the said Burr and Wheeler, and by the said Burr and Wheeler to the said Giles were as follows:

a. William R. Dawson and Sarah H., his wife; Melita C. Dawson, and Mina S. Dawson to said Burr and Wheeler September 15th, 1879.

b. Albert L. Dawson, Mahala, his wife; Evaline M. Dawson Kniceley, and A. A., her husband, to said Burr and Wheeler September 15, 1879.

867 *c.* Burr and Wheeler to Giles, April 27th, 1880.

d. Melita C. Dawson Tillman to said Giles, January 2, 1882.

3. The defendants in the said cross-bill have, since the remarriage of the said Edith J. Dawson, paid taxes as follows:

a. 18 feet and 9 inches off the west side of lot 5 and 8 inches off the east side of lot 6, in block 54, paid by Owen and Oakley for the years '80 and '81, May 5th, 1881, $365.48; November 8, 1882, $194.25—total, $359.73.

b. The west half of lot 3 and 9.31 feet off the east side of lot 4, in block 54, paid by T. F. Sherwin for the year 1880, July 2nd, 1881, $377.30; for the year 1881, paid by A. P. S. Stuart, November 8, 1882, $194.25.

c. Lot 4, in block 31, Dawson's addition to South Lincoln. Tax of 1880 paid by Owen and Oakley, May 5, '83, $11.82.

d. Lot 3, in block 31. Tax of 1880 paid by D. B. Alexander, May 6, 1881, $1.48.

e. On lots 5, 6, 7, in block 36, and lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12 was paid by A. C. Huestes for the year 1880, January 14, 1881, $11.37; and on the same lots for 1881, May 4th, 1882, by A. C. Huestes, $14.24; and for the same lots for the year 1882 by A. C. Huestes, May 17th, 1883, $17.48.

f. All of block 39, in Dawson's addition to South Lincoln, for the tax of 1881, paid October 24, 1882, by C. A. Bumstead, $20.73.

g. Lots 1, 2, 3, 9, 10, 11, 12, in block 42, Dawson's addition South Lincoln, for the tax of 1880, paid by C. C. Snowden, August 4, '81, $8.88.

h. Lots 7, 8, 9, block 47, Dawson's addition, tax of 1880, paid by C. C. Snowden, August 4, 1881, $2.67.

i. Lots 8 and 9, block 41, Dawson's addition, tax of 1880, paid April 12, 1881, by Thomas Wood, $2.96; the same for 1881,
868 paid May 9, 1882, by Thomas Wood, $3.88; the same for 1882 paid May 31st, 1883, by Thomas Wood, $4.60.

j. Lots 10, 11, 12, in block 41, Dawson's addtion, for the tax of 1880, paid by Thomas Wood April 12, 1881, $11.82; the same for 1881, paid May 9, 1882, by Thomas Wood, $13.59; same for 1882, paid May 31, 1883, by Thomas Wood, $13.81.

k. Lots 1 and 2, in block 32, for the year 1880, paid by M. B. Cheeney May 5, 1881, $4.33; for the year 1881, paid and redeemed November 20, 1882, $8.70; for the year 1882, paid by M. B. Cheeney May 3, 1883, $7.23.

l. All of block 46, for tax of 1880, paid July 8, 1881, by H. A. Tuttle, $11.82; for tax of 1881, paid July 5, 1882, by H. A. Tuttle, $12.94.

m. Lot 5, block 46, tax of 1881, paid October 16, 1882, by R. Prindle, 97 cents.

n. The southeast quarter of southeast quarter of section 35, town. 10, range 6 east, tax of 1880, paid May 4, 1881, by Van Dorn and Lashus, $21.21; for tax of 1881, paid by Van Dorn and Lashus, July 31, 1882, $61.50.

o. The west half of southeast quarter, sec. 19, town. 10, range 7, tax of 1880, paid by A. W. Hawley May 23, 1881, $31.19; for tax of 1882, paid by A. W. Hawley May 11, 1882, $34.92.

p. The north half of southwest quarter, sec. 19, town. 10, range 7, included in above.

q. The east half of west half of the south half of the southwest quarter of the southeast quarter, sec. 19, town. 10, range 7, tax of 1880, paid by H. O. Snow March 26, 1881, $2.60.

r. The west half of the west half of the south half of the southwest quarter of the southeast quarter of sec. 19, town. 10, range 7, paid by Samuel Arthur March 26, 1881, $2.60; for tax of 1881, paid by Samuel Arthur April 25, 1882, $3.60; for tax of 1882, paid
869 by Samuel Arthur February 19, 1883, $3.30.

s. The east half of the south half of the southwest quarter

of the southeast quarter of section 19, town. 10, range 7, tax of 1880, paid by George Warder March 26, 1881, $5.20; for tax of 1881, paid by George Warder June 17, 1882, $5.82.

4. The character and value of the improvements and the time within which the same were made from the death of the testator—that is to say, from the 22nd of June, 1869—were as follows: The character thereof is set forth in the master's report correctly, and the same were of a permanent and valuable character.

a. On 18 feet and 9 and one-half inches off the west side of lot 5 and 8 inches off the east side of lot 6, in block 54, are structures of the value of $3,100, erected prior to 1871 by Cody, grantor of Owen and Oakley.

b. Lot 6, in block 54, except 8 inches off the east side thereof, a structure of the value of $4,200, erected by Little in 1878.

c. Fifteen feet and $\frac{6}{100}$ off the west side of lot 4, six feet and $\frac{25}{100}$ off the east side of lot 5, in block 54, a structure of the value of $2,600, erected by said Cody, grantor of said Alexander, in 1871.

d. The west half of lot 3 and 9 inches off the east side of lot 4, in block 54, a structure of the value of $3,350, erected by said Cody, grantor of said Stuart, in 1871.

e. Lots 5 and 6, in block 32, in Dawson's addition to South Lincoln, a structure of the value of $550.

f. Lot 1, in block 32, Dawson's addition to South Lincoln, a structure of the value of $500, erected in 1881.

g. Lot 6, in block 38, Dawson's addition to South Lincoln, a structure of the value of $350.

870 *h.* Lot 12, in block 41, Dawson's addition to South Lincoln, a structure of the value of $450, erected about 1878.

i. The southeast quarter of the southeast quarter of section 35, town. 10, range 6, a structure of the value of $100, erected in 1881.

j. The west half of the southeast quarter of section.

k. Situated on said premises, in block 54, a dwelling-house of the value of $1,000, erected in the lifetime and by said Jacob Dawson.

5. The rental value and the rents actually received by each defendant and by the receiver, were as follows:

a. From December 14, 1879, by Owen and Oakley, from their said premises, $3,841.64, and by the receiver from said property, $645.

b. By S. W. Little, from same date, $4,562.50, and by the receiver, $750.

c. By Martha Alexander, $3.145.25; by the receiver, $701.

d. By A. P. S. Stuart from said date, $2,881.50; by the receiver, $1,867.00.

e. Van Dorn and Lashus, between said dates, $360.

f. By Allen W. Hawley, $720.

g. H. O. Snow, between said dates, $60.

h. S. Arthur, $60.

i. George Warder, $120.00.

6. Thereupon it was ordered, adjudged, and decreed as follows:

1. That the defendants, Owen and Oakley, upon demand in that behalf made upon them by the said Giles, or his agent thereunto duly empowered, surrender and deliver up unto said Giles, or his

said agent, the premises in the original bill and the answer to the cross-bill claimed by them on said plaintiff's paying to said Owen and Oakley the sum of $242.91 for improvements—that is to
871 say, 18 feet 9½ inches off the west side of lot 5 and 8 inches off the east side of lot 6, in block 54, in the said city of Lincoln, Lancaster county, State of Nebraska, and that a writ of possession isssue out of this court to the marshal to enforce the surrender thereof, and that the receiver in this cause heretofore appointed discharge the tenants of the said premises from the payment of the rents thereof, and notify them thereafter to account for and pay the rent to the said Giles as the owner thereof.

2. That the defendant, S. W. Little, upon demand in that behalf made upon him by the said Giles, or his agent thereunto duly empowered, surrender and deliver unto the said Giles, or his agent, the premises in the original bill and the answer to the cross-bill claimed by him on plaintiff paying said Little $487.50, balance for improvements—that is to say, lot 6, in block 54, except 8 inches off the east side thereof, in the said city of Lincoln, and that a writ of possession issue out of this court to the marshal to enforce the surrender thereof, and that the receiver in this cause heretofore appointed discharge the tenants of the said premises from the payment of rents thereof, and notify them thereafter to account for and pay the rent to the said Giles as the owner thereof.

3. That the defendant, Martha Alexander, upon demand in that behalf made upon her by the said Giles, or his agent thereunto duly empowered, surrender and deliver unto the said Giles, or his agent, the premises in the original bill and the answer to the cross-bill by her claimed on paying to said Alexander the sum of $155, balance on improvements—that is to say, fifteen and $\frac{63}{100}$ feet off the west side of lot 4 and 6 and $\frac{25}{100}$ feet off the east side of lot 5, in
872 block 54, in said city of Lincoln, and that a writ of possession issue out of this court to the marshal to enforce [the] surrender thereof, and the receiver in this cause heretofore appointed discharge the tenants of the said premises from the payment of rent thereof, and notify them thereafter to account for and pay the rents to said Giles as owner thereof.

4. That the defendant, A. P. S. Stuart, upon demand in that behalf, made upon him by the said Giles, or his agent thereunto duly empowered, surrender and deliver unto the said Giles, or his agent, the premises in the said original bill and the answer to the cross-bill claimed by him on plaintiff paying said Stuart the sum of $1,708.55, balance on improvements—that is to say, the west half of lot three and $9\frac{31}{100}$ feet off the east side of lot 4, in block 54, in the said city of Lincoln, and that a writ of possession issue out of this court to the marshal to enforce the surrender thereof. and that the receiver in this cause heretofore appointed discharge the tenants of the said premises from the payment of rents thereof, and notify them thereafter to account for and pay the rents to the said Giles as owner thereof.

5. It appearing that the said Samuel Henderson has erected upon lots 5 and 6, block 32, Dawson's addition to South Lincoln, improve-

ments of the value [of] $550, and this court finding that he is properly chargeable for the use and occupation thereof from June 13, 1880, to the date of this decree 10 per cent. of the said sum, which amounts to $198, upon the payment by the said Giles to the said Henderson of $352, and demand by or on behalf of the said Giles in that behalf the said Henderson shall surrender to the said Giles the said premises, and writ of possession to compel the said
873 surrender shall issue out of this court to the marshal, and deposit of the said sum of $352 to the clerk of this court for the said Henderson shall answer and be taken for due tender thereof to him, the said Giles now here in open court electing to have the said premises and pay the sum herein charged against him.

6. It appearing that the said M. B. Cheeney or his grantor have erected upon lot one, in block 32 of Dawson's addition to South Lincoln, in said county of Lancaster and State of Nebraska, improvements of the value of $500, and this court finding that he is properly chargeable for the use and occupation thereof from June 13, 1880, to the date of this decree 10 per cent. of said sum, which amounts to the sum of $180, upon the payment by the said Giles to the said Cheeney of the sum of $320, and demand by or on behalf of the said Giles in that behalf the said Henderson shall surrender to the said Giles the said premises, and a writ of possession to compel the surrender thereof shall issue out of this court to the marshal, and the deposit of said sum of $320. to the clerk of this court for the said Henderson shall answer and be taken for due tender thereof to him, the said Giles now here in open court electing to have the said premises and pay the sum herein charged against them.

7. It appearing that the said O. P. Austin has erected — lot 6, in block 38, in Dawson's addition to South Lincoln improvements of the value of $350, and this court finding that he is properly chargeable for the use and occupation thereof from June 13, 1880, to the date of this decree 10 per cent. of said sum, which amounts to $108, upon the payment by the said Giles to the said Austin of $242, and demand by or on behalf of the said Giles in that behalf the
874 said Henderson shall surrender to the said Giles the said premises, and a writ of possession to compel the surrender thereof shall issue out of this court to the marshal, and deposit of the said sum of $242 to the clerk of this court for the said Austin shall answer and be taken for due tender thereof to him, the said Giles now here in open court electing to have the said premises and pay the sum herein charged against him.

8. It appearing that the said Thomas Woods has erected upon lot 12, in block 41, in said Dawson's addition to South Lincoln, improvements of the value of $450, and this court finding that he is properly chargeable for the use and occupation thereof from June 13, 1880, to the date of this decree 10 per cent. of said sum, which amounts to the sum of $175, upon the payment by the said Giles to the said Woods of the sum of $275, and demand by or on behalf of the said Giles in that behalf, the said Woods shall surrender to the said Giles the said premises, and a writ of possession to compel

the surrender thereof shall issue out of this court to the marshal, and the deposit of said sum of $275 with the clerk of this court for the said Woods shall answer and be taken for due tender thereof to him, the said Giles now here in open court electing to have the said premises and pay the sum herein charged against them.

9. That the defendants, W. J. Van Dorn and G. W. Lashus, upon demand in that behalf made upon them, or either of them, by the said Giles or his agent, thereunto duly empowered, surrender and deliver unto the said Giles or his agent the premises in the original bill and the answer to the cross-bill claimed by them—that is to say,
875 the southeast quarter of the southeast quarter of section 35, town. 10, range 6, in said Lancaster county, and that a writ of possession issue out ot this court to the marshal to enforce the surrender thereof, and that the receiver in this cause heretofore appointed discharge the tenants of the said premises from the payment of rents thereof, and notify them thereafter to account for and pay the rents to said Giles as the owner thereof, and that the said Giles have and receive of and from the said Van Dorn and Lashus, and each of them, the sum of $140, the same being the rents received by them from and on account of said premises to which the said Giles is entitled, and that execution issue out of this court to the marshal commanding him according to law to collect the said sums from the said Van Dorn and Lashus.

10. That the said Allen W. Hawley, defendant, upon demand in that behalf made upon him by the said Giles or his agent thereunto duly empowered, surrender and deliver unto the said Giles or his agent the premises in the original bill and the answer to the cross-bill claimed by him—that is to say, the northwest quarter of the southeast quarter and the north half of the southwest quarter of the scutheast quarter of section 19, town. 10, range 7 east, in said Lancaster county, being 60 acres, and that a writ of possession issue out of this court to the marshal to enforce the surrender thereof, and that the receiver in this cause heretofore appointed discharge the tenants of the said premises from the payment of rents thereof and notify them thereafter to account for and pay the rents to the said Giles as the owner thereof, and that said Giles have and recover of and from the said Allen W. Hawley the sum of $33.89, the same being the rents received by him from and on account of said premises to which the said Giles is entitled, and that execution
876 issue out of this court to the marshal commanding him according to law to collect the said sum from the said Allen W. Hawley.

11. That the defendant, H. O. Snow, upon demand in that behalf made upon him by the said Giles or his agent thereunto duly empowered, surrender and deliver unto the said Giles or his agent the premises in the original bill and the answer to the cross-bill claimed therein—that is to say, the east half of the west half of the south half of the southwest quarter of the southeast quarter of section 19, town. 10, range 7 east, in said Lancaster county, containing 5 acres, and that a writ of possession issue out of said court to the marshal

to enforce the surrender thereof, and that the receiver in this cause heretofore appointed discharge the tenants of the said premises from the payments of rents hereof, and notify them thereafter to account for and pay the rents to the said Giles as the owner thereof.

12. That the defendant, S. Arthur, upon demand in that behalf made upon him by the said Giles or his agent, thereunto duly empowered, surrender and deliver unto the said Giles or his agent the premises in the original bill and the answer to the cross-bill claimed by him—that is to say, the west half of the west one-half of the south half of the southwest quarter of the southeast quarter of section 19, town. 10, range 7 east, Lancaster county, Nebraska, containing 5 acres, and that a writ of possession issue out of this court to the marshal to enforce the surrender thereof and that the receiver in this cause heretofore appointed, discharge the tenants of the said premises from the payments of rents thereof, and notify them thereafter to account for and pay the rents to the said
877 Giles as owner thereof.

13. That the defendant, George Warder, upon demand in that behalf made upon him by the said Giles or his agent, thereunto duly empowered, surrender and deliver unto the said Giles or his agent the premises in the original bill and the answer to the cross-bill claimed by him—that is to say, the east one-half of the south one-half of the southwest quarter of the southeast quarter of section 19, town. 10, range 7 east, in said Lancaster county, containing 10 acres, and that a writ of possession issue out of this court to the marshal to enforce the surrender hereof, and that the receiver in this cause heretofore appointed discharge the tenants of the said premises from the payments of rents thereof, and notify them thereafter to account for and pay the rents to the said Giles as owner thereof.

7. It is ordered and decreed that the monies in the receiver's hands at the settlement of his accounts, as hereinafter provided, be paid to said Giles within thirty days from the date of this decree — the several defendants in the cross-bill, against them, respectively, in the clauses in the last above paragraph decrees are rendered, and each of them shall make to the said Giles deeds in due form of law and duly acknowledged, so as to entitle them to be recorded, conveying to the said Giles all of the interest by them, respectively, claimed in their original bill and in their answer to the cross-bill, subject, nevertheless, to the condition in the said causes mentioned, for the payment to them, respectively, of the sums to which on account of improvements they are found to be entitled; and if any one of them shall fail or neglect to make his deed accordingly, Elmer S. Dundy, Jr., who is hereby appointed master for the purpose, shall make on their behalf, or on behalf of such defaulting party, a deed or deeds to the same effect.

878 8. The parties respectively praying an appeal against this decree to the Supreme Court, the same is allowed to the said Ezekiel Giles against S. W. Little, Martha Alexander, S. G. Owen, R. H. Oakley, A. P. S. Stuart, Samuel Henderson, M. B. Cheeney, O.

P. Austin, Thomas Woods, W. J. Van Dorn, G. W. Lashus, Allen W. Hawley, H. O. Snow, George Warder, [and] Samuel Arthur, and the said Giles shall give a bond to operate as a supersedeas in the sum of $2,000.

And the plaintiffs in the original bill pray an appeal to the Supreme Court, which is hereby allowed to them jointly, and they are required to give a bond in the sum of $2,000, to operate as a supersedeas, and each of them is hereby allowed a separate appeal, and he is required to give a bond in the sum of $500 to operate as a supersedeas. The receiver is hereby continued pending said appeal, and from the rents of the said several parcels of land he shall pay the taxes which have been or may be levied or assessed thereon pending the appeal.

Within five days from the date of this decree he shall file his report of all his dealings and transactions in respect of each parcel of land mentioned in this decree, and his said report is hereby referred to J. L. Webster, one of the masters of this court, to audit, examine, and report thereon, and the said master shall file his report within twenty days from receiving a copy of the receiver's report. But if any of the parties to this suit, being plaintiffs in the original bill or defendants in the cross-bill, shall not give a supersedeas bond, as hereinbefore provided, as to the premises claimed by him adversely to said Giles, the receivership is and shall be discharged, such discharge to date from the demand of said Giles for possession, as hereinbefore provided. And the amount coming to said Giles from such party shall be paid to him.

879 9. The costs of this suit to be taxed by the clerk shall be paid by the plaintiffs in the original bill and the defendants in the cross-bill, and executions may issue therefor.

The sum of five hundred dollars is allowed to the guardian *ad litem* of the infant defendants in the original bill, and shall be taxed as costs against the plaintiffs in said bill.

(S'g'd) ELMER S. DUNDY, *Judge.*

Thereupon, afterwards, to wit, on the 5th day of September, 1884, affidavits of value of property and bonds were filed in said case, which said affidavits and bonds are in words and figures following, to wit:

Affidavits of Value of Property.

In the United States Circuit Court, District of Nebraska. In Equity.

S. W. LITTLE *et al.*
vs.
EZEKIEL GILES, L. C. BURR, H. H. WHEELER, Minnie S. Dawson, Carlton Dawson, by J. M. Woolworth, Their Guardian *ad litem*, Impleaded with Albert L. Dawson, William R. Dawson, Sarah H. Dawson, A. A. Kniceley, William A. Goodwin, and Melita C. D. Tillman. } Original Bill.

EZEKIEL GILES
vs.
S. W. LITTLE, D. B. ALEXANDER, and MARTHA, His Wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhinney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney; Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney. } Cross-bill.

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Jno. H. Ames and W. J. Lamb, — being first duly sworn on oath says he is a resident of Lancaster county, Nebraska; that the value of the following-described lands in controversy herein, exclusive of the buildings thereon, to wit, "18 feet and 9½ inches off the west side of lot five and eight inches off the east side of lot six, block 54, in Lincoln," exceeds the sum of $4,500, and that the rents thereon in controversy in this action exceed the sum of $1,200, and that the value of the property and amount in controversy in this action between the said S. G. Owen and R. H. Oakley and the said Ezekiel Giles exceed in amount and value five thousand dollars, exclusive of costs; and further saith not.

JOHN H. AMES.
WALTER J. LAMB.

Subscribed in my presence and sworn to before me this 5th day of Sept., 1884.

ELMER D. FRANK, *Clerk.*

Endorsed: No. 202, F. S. W. Little *vs.* Ezekiel Giles *et al.* Affidavit of value of property. Filed Sep. 5, 1884. Elmer D. Frank, cl'k.

In the United States Circuit Court, District of Nebraska. In Equity.

S. W. LITTLE *et al.*
vs.
EZEKIEL GILES, L. C. BURR, H. H. WHEELER, MINNIE S. Dawson, Carlton Dawson, by T. M. Woolworth, Their Guardian *ad litem*, Impleaded with Albert L. Dawson, William R. Dawson, Sarah H. Dawson, A. A. Knicely, William A. Goodwin, and Melita C. D. Tillman. } Original Bill.

EZEKIEL GILES
vs.
S. W. LITTLE, D. B. ALEXANDER, and MARTHA, His Wife, S. G. Owen, R. H. Oakley. Sarah J. Purcell, P. S. Stuart, Mary A. McElhinney, Alexander C Huestes, W. J. Van Dorn, G. W. Lashus,
881 Charles D. C. Huestes, Samuel Arbuncle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney. } Cross-bill.

John H. Ames and W. J. Lamb, each being first duly sworn, on oath says he is a resident of Lancaster county, Nebraska; that the value of the following-described lands in controversy herein, exclusive of the buildings thereon, to wit, 15.63 feet off the west side of lot 4 and 6.25 off the east side of lot 5, in block 54, in Lincoln, exceeds the sum of $4,500, and that the rents thereon in controversy in this action exceed the sum of $2,000, and that the value of the property and amount in controversy in this action between the said Martha Alexander and the said Ezekiel Giles exceeds in amount and value five thousand dollars, exclusive of costs.

And further saith not.

W. J. LAMB.
JOHN H. AMES.

Subscribed in my presence and sworn to before me this 5th day of Sept., 1884.

ELMER D. FRANK, *Clerk.*

Endorsed: No. 202, F. S. W. Little *vs.* Ezekiel Giles *et al.* Affidavit of value of property. Filed Sep. 5, 1884. Elmer D. Frank, clerk.

In the United States Circuit Court, District of Nebraska.

S. W. LITTLE *et al.*
vs.
EZEKIEL GILES, L. C. BURR, H. H. WHEELER, Minnie S. Dawson, Carlton Dawson, by J. M. Woolworth, Their Guardian *ad litem*, Impleaded with Albert L. Dawson, William R. Dawson, 882 Sarah H. Dawson, A. A. Kniceley, William A. Goodwin, and Melita C. D. Tillman. } Original Bill.

EZEKIEL GILES
vs.
S. W. LITTLE, D. B. ALEXANDER, and MARTHA, His Wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhinney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuncle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney. } Cross-bill.

Jno. H. Ames and W. J. Lamb, each being first duly sworn, on oath says he is a resident of Lancaster county, Nebraska; that the value of the following-described lands in controversy herein, exclusive of the buildings thereon, to wit, the west half of lot 3 and 9.31 feet off the east side of lot 4, in block 54, Lincoln, exceeds the sum of $——, and that the rents thereon in controversy in this action exceed the sum of $——, and that the value of the property and amount in controversy in this action between the said A. P. S. Stuart and the said Ezekiel Giles exceed in amount and value five thousand dollars exclusive of costs; and further saith not.

JOHN H. AMES.
W. J. LAMB.

Subscribed in my presence and sworn to before me this 5th day of Sept., 1884.

ELMER D. FRANK, *Clerk.*

Endorsed: No. 202, F. S. W. Little *vs.* Ezekiel Giles *et al.* Affidavits of value of property. Filed Sep. 5, 1884. Elmer D. Frank, clerk.

883 In the United States Circuit Court, District of Nebraska. In Equity.

S. W. LITTLE *et al.*
vs.
EZEKIEL GILES, L. C. BURR, H. H. WHEELER, Minnie S. Dawson, Carlton Dawson, by J. M. Woolworth, Their Guardian *ad litem*, Impleaded with Albert L. Dawson, William R. Dawson, Sarah H. Dawson, A. A. Kniceley, William A. Goodwin, and Melita C. D. Tillman. } Original Bill.

EZEKIEL GILES
vs.
S. W. LITTLE, D. B. ALEXANDER, and MARY, His Wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased, Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney. } Cross-bill.

Jno. H. Ames and W. J. Lamb, — being first duly sworn, on oath says he is a resident of Lancaster county, Nebraska; that the value of the following-described lands in controversy herein, exclusive of the buildings thereon, to wit, lot 6, block 54, except 8 inches off the east side thereof, exceeds the sum of $5,000, and that the rents thereon in controversy in this action exceed the sum of $2,000, and that the value of the property and amount in controversy in this action between the said S. W. Little and the said Ezekiel Giles exceed in amount and value five thousand dollars, exclusive of costs; and further saith not.

W. J. LAMB.
JOHN H. AMES.

884 Subscribed in my presence and sworn to before me this 5 day of Sept., 1884.

ELMER D. FRANK, *Clerk.*

Endorsed: No. 202, F. S. W. Little *vs.* Ezekiel Giles *et al.* Affidavit of value of property. Filed Sept. 5, 1884. Elmer D. Frank, clerk.

In the Circuit Court of the United States, District of Nebraska.

S. W. LITTLE, D. B. ALEXANDER, and MARTHA, His Wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Heustes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Heustes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney, and Allen W. Hawley, Complainants,

vs.

EZEKIEL GILES, L. C. BURR, H. H. WHEELER, Minnie S. Dawson, Carlton Dawson, by J. M. Woolworth, Their Guardian *ad litem*, Impleaded with Albert L. Dawson, William R. Dawson, Sarah H. Dawson, A. A. Kniceley, William A. Goodwin, and Melita C. D. Tillman, Respondents.

} Original Bill.

and

EZEKIEL GILES, Complainant,

vs.

S. W. LITTLE, D. B. ALEXANDER, and MARTHA, His Wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Heustes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney, and Allen W. Hawley, Respondents.

885 Chas. T. Boggs, W. W. Holmes, R. H. Oakley, and Sam'l J. Tuttle, each being for himself duly sworn, on oath says he is a resident of Lancaster county, State of Nebraska, and is acquainted with the value of real estate in said county; that he is acquainted with Allen W. Hawley tract, the northwest quarter of the southeast quarter of section nineteen, and the north half of the southwest — of the southeast quarter, all of section nineteen, township ten, range seven east, in Lancaster county, Nebraska, and that, in the opinion of the affiant, the said lands are worth and are of the value of one hundred dollars per acre, and that the value of said

tract of land exceeds the sum of five thousand dollars, and further affiant saith not.

CHAS. T. BOGGS.
W. W. HOLMES.
R. H. OAKLEY.
SAM'L J. TUTTLE.

WM. M. CLARK.

STATE OF NEBRASKA, } ss:
Lancaster County, }

Subscribed in my presence and severally sworn to before me this 5 day of September, 1884.

[SEAL.]

A. C. PLATT,
Notary Public, Lancaster County.

Endorsed: No. 202, F. Little *et al. vs.* Giles *et al.* Affidavit of value. Filed Sept. 5, 1884. Elmer D. Frank, clerk.

In the United States Circuit Court, District of Nebraska. In Equity.

S. W. LITTLE *et al.*
vs.
EZEKIEL GILES, L. C. BURR, H. H. WHEELER, MINNIE S. Dawson, Carlton Dawson, by J. M. Woolworth, Their Guardian *ad litem*, Impleaded with Albert L. Dawson, William R. Dawson, Sarah H. Dawson, A. A. Knicely, William Goodwin, and Melita C. D. Tillman. } Original Bill.

EZEKIEL GILES
vs.
886 S. W. LITTLE, D. B. ALEXANDER and MARTHA, His Wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney; Henry S. Gordon, Executor of the Estate of E. H. Tuttle, Deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney. } Cross-bill.

Jno. H. Ames and W. J. Lamb, each being first duly sworn, on oath says he is a resident of Lancaster county, State of Nebraska, and that the value of the real estate (exclusive of the buildings situated thereon) in controversy in this action in the original bill and in the cross-bill described exceeds in amount twenty thousand dollars, and that the value of the property and amount in controversy

in this action exceeds the sum of ten thousand dollars, exclusive of costs.

JOHN H. AMES.
W. J. LAMB.

Subscribed in my presence and sworn to before me this 5 day of Sept., 1884.

ELMER D. FRANK, *Clerk.*

Upon the back of said affidavit of value of property appear endorsements in words and figures following, to wit: No. 202, F. S. W. Little *vs.* Ezekiel Giles *et al.* Affidavit of value of property. Filed Sep. 5, 1884. Elmer D. Frank, clerk.

Bonds for Appeal.

Know all men by these presents that we, S. G. Owen & R. H. Oakley, as principals, and A. P. S. Stewart and J. R. Richards, as sureties, are held and firmly bound unto Ezekiel Giles in the full and just sum of five hundred [dollars], to be paid to the said Ezekiel Giles, his certain attorney, executor, administrators, or assigns,
887 to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between Ezekiel Giles, complainant in a cross-bill, and S. W. Little, D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney, a decree was rendered against the said S. W. Little, D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. G. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, [and] Mary E. McSweeney, and the said Sam'l G. Owen and R. H. Oakley having obtained an appeal therefrom and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid

suit, and a citation directed to the said Ezekiel Giles citing
888 and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next.

Now the condition of the above obligation is such that if the said Samuel G. Owen and R. H. Oakley shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

R. H. OAKLEY.
SAMUEL G. OWEN.
A. P. S. STEWART.
J. R. RICHARDS.

Above bond approved by—

ELMER S. DUNDY, *Judge.*

Upon the back of this bond appear endorsements in words and figures following, to wit: No. 202, F. Little *et al. vs.* Giles *et al.* Bond for appeal. Owen and Oakley. Filed Sep. 5, 1884. Elmer D. Frank, clerk.

Know all men by these presents that I, A. P. S. Stuart, as principal, and Samuel G. Owen and Chas. W. Mosher, as sureties, are held and firmly bound unto Ezekiel Giles in the full and just sum of five hundred [dollars], to be paid to the said Ezekiel Giles, his certain attorney, executors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifth day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between Ezekiel Giles, complainant in a cross-bill, and S. W. Little, D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah
889 J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson. Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney, a decree was rendered against the said S. W. Little, D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H.

Tuttle, deceased, Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, [and] Mary A. McSweeney, and the said A. P. S. Stuart having obtained an appeal therefrom and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Ezekiel Giles citing and admonishing him to appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such that if the said A. P. S. Stewart shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

A. P. S. STEWART.
SAMUEL G. OWEN.
CHAS. W. MOSHER.

Above bond approved by—

ELMER S. DUNDY, *Judge.*

890 Upon the back of said bond appear endorsements in words and figures following, to wit: No. 202, F. Little *et al. vs.* Giles *et al.* Bond for appeal. Stewart. Filed Sept. 5, 1884. Elmer D. Frank, clerk.

Know all men by these presents that we, Allen W. Hawley, as principal, and J. Baughman, as surety, are held and firmly bound unto Ezekiel Giles in the full and just sum of five hundred dollars, to be paid to the said Ezekiel Giles, his attorney, executors, administrators, or assigns; to which payment, well and truly be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this sixth day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas, lately, at a circuit court of the United States for the district of Nebraska, in a suit in said court between Ezekiel Giles, complainant in a cross-bill, and S. W. Little, D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney, and Allen W. Hawley, a decree was rendered against the said S. W. Little, D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Sam-
891 uel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Sam-

uel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney, and Allen W. Hawley; and the said Allen W. Hawley having obtained an appeal therefrom and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Ezekiel Giles, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, on the 2nd day of October next:

Now the condition of the above obligation is such that if the said Allen W. Hawley shall prosecute his appeal to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ALLEN W. HAWLEY.
J. BAUGHMAN.

Above bond approved by—

ELMER S. DUNDY, *Judge.*

Upon the back of said bond appear endorsements in words and figures following, to wit: No. 202, F. Little *et al. vs.* Giles *et al.* Bond for appeal. Filed Sep. 5, 1884. Elmer D. Frank, clerk.

Know all men by these presents that we, D. B. Alexander and Martha Alexander, his wife, as principals, and W. J. Lamb and J. H. McMurtry, as sureties, are held and firmly bound unto Ezekiel Giles in the full and just sum of five hundred [dollars], to be paid to the said Ezekiel Giles, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of September,
892 in the year of our Lord one thousand eight hundred and eighty-four.

Whereas, lately, at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between Ezekiel Giles, complainant in a cross-bill, and S. W. Little, D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney, a decree was rendered against the said S. W. Little, D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods,

W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney; and the said D. B. Alexander and Martha Alexander, his wife, having obtained an appeal therefrom and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Ezekiel Giles, citing and admonishing him to appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such that if the said D. B. Alexander and Martha Alexander, his wife, shall prosecute their appeal to effect, and answer all damages and costs
893 if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

MARTHA ALEXANDER &
D. B. ALEXANDER,
By W. J. LAMB,
Their Agent & Attorney.
WALTER J. LAMB.
J. H. McMURTRY.

Above bond approved by—

ELMER S. DUNDY, *Judge.*

Upon the back of said bond appear endorsements in words and figuresf ollowing, to wit: No. 202, F. Little *et al. vs.* Giles *et al.* Bond for appeal. Alexander. Filed Sept. 5, 1884. Elmer D. Frank, clerk.

Know all men by these presents that I, S. W. Little, as principal, and J. C. DePutron, W. J. Lamb, & J. H. McMurtry, as sureties, are held and firmly bound unto Ezekiel Giles in the full and just sum of five hundred [dollars], to be paid to the said Ezekiel Giles, his certain attorney, executors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of Sept., in the year of our Lord one thousand eight hundred and eighty-four.

Whereas, lately, at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between Ezekiel Giles, complainant in cross-bill, and S. W. Little, D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stewart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S.Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O.
894 Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney, a decree was rendered against the said

S. W. Little, D. B. Alexander, and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedmen, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney; and the said S. W. Little having obtained an appeal therefrom and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Ezekiel Giles, citing and admonishing him to appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such that if the said S. W. Little shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

S. W. LITTLE,
By W. J. LAMB,
His Agent and Attorney.
J. C. DE PUTRON.
WALTER J. LAMB.
J. H. McMURTRY.

Above bond approved by—

ELMER S. DUNDY, *Judge.*

Upon the back of said bond appear endorsements in words and figures following, to wit: No. 202, F. Little *et al. vs.* Giles *et al.* Bond for appeal. S. W. Little. Filed Sep. 5, 1884. Elmer D. Frank, clerk.

895 Know all men by these presents that we, S. W. Little, D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney, as principles, and J. C. De Putron, as sureties, are held and firmly bound unto Ezekiel Giles in the full and just sum of two thousand dollars, to be paid to the said Ezekiel Giles, his certain attorney, executor, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 6 day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas, lately, at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between Ezekiel Giles, complainant in a cross-bill, and S. W. Little, D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney, Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney and Allen W. Hawley, a decree was rendered against the said
896 S. W. Little; D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney; Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney, Allen W. Hawley; and the said S. W. Little; D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, Sarah J. Purcell, S. P. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwabold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney; Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney having obtained an appeal therefrom and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Ezekiel Giles, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said S. W. Little; D. B. Alexander and Martha, his wife; S. G. Owen; R. H. Oakley, Sarah, J. Purcell, P. S. Stuart, Mary A. McElhiney, Alexander C. Huestes, W. J. Van Dorn, G. W. Lashus, Charles D. C. Huestes, Samuel Arbuckle, Jacob Freedman, O. P. Austin, Sarah A. Grable, Samuel Aughey, Clarinda A. Bumstead, Charles C. Snowden, Thomas Woods, W. S. Garrison, S. E. Story, John H. Schwa-
897 bold, Samuel Henderson, Joseph Richardson, M. B. Cheeney, Mary E. Maloney; Henry S. Gordon, executor of the estate of E. H. Tuttle, deceased; Guy A. Brown, H. O. Snow, George Warder, Rhoda A. Prindle, Charles Hanna, Mary A. McSweeney shall prosecute their appeal to effect and answer all damages and costs if they

fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

S. W. LITTLE,
D. B. ALEXANDER AND
MARTHA, *His Wife*,
S. G. OWEN,
R. H. OAKLEY,
SARAH J. PURCELL,
P. S. STUART,
MARY A. McELHINEY,
ALEXANDER C. HUESTES,
W. J. VAN DORN,
G. W. LASHUS,
CHARLES D. C. HUESTES,
SAMUEL ARBUCKLE,
JACOB FREEDMAN,
O. P. AUSTIN,
SARAH A. GRABLE,
SAMUEL AUGHEY,
CLARINDA A. BUMSTEAD,
CHARLES C. SNOWDEN,
THOMAS WOODS,
W. S. GARRISON,
S. E. STORY,
JOHN H. SCHWABOLD,
SAMUEL HENDERSON,
JOSEPH RICHARDSON,
M. B. CHEENEY,
MARY E. MALONEY,
HENRY S. GORDON,
Executor of the Estate of E. H. Tuttle, Deceased,
GUY A. BROWN,
H. O. SNOW,
GEORGE WARDER,
RHODA A. PRINDLE,
CHARLES HANNA,
MARY A. McSWEENEY, &
ALLEN W. HAWLEY,
By W. J. LAMB, *Their Attorney.*
R. H. OAKLEY.
A. P. STUART.
SAMUEL G. OWEN.
ALLEN W. HAWLEY.

J. C. DEPUTRON.

Above bond approved by—

ELMER S. DUNDY, *Judge.*

Upon the back of said bond appear endorsements in words and figures following, to wit: No. 202, F. Little *et al. vs.* Giles *et al.* Bond for appeal. Filed Sep. 5, 1884. Elmer D. Frank, clerk.

898 DISTRICT OF NEBRASKA, *ss:*

I, Elmer D. Frank, clerk of the circuit court of the United States for the eighth circuit and district of Nebraska, do hereby certify that the foregoing folios from one to 897 contain true and faithful transcripts of all pleadings and proceedings of record and on file in my office as said clerk, and the whole thereof and the endorsements thereon, in the cases of S. W. Little *et al.*, complainants, *vs.* Ezekiel Giles *et al.*, defendants, and Ezekiel Giles, cross-complainant, *vs.* S. W. Little *et al.*, defendants.

Witness my hand and the seal of said circuit court, at Omaha, this 25th day of September, A. D. 1884.

[Seal United States Circuit Court, District of Nebraska.]

ELMER D. FRANK, *Clerk.*

Endorsed on cover: Nebraska C. C. U. S. No. 648. S. W. Little D. B. Alexander and Martha, his wife; S. G. Owen, R. H. Oakley, *et al.*, appellants, *vs.* Ezekiel Giles *et al.* Filed 8th October, 1884.

118-596

IN THE

Supreme Court of the United States.

S. W. LITTLE ET AL.,

Plaintiffs,

vs.

EZEKIEL GILES ET AL.,

Defendants.

ABSTRACT, ASSIGNMENTS OF ERRORS, AND BRIEF FOR APPELLANTS.

T. M. MARQUETT,
N. S. HARWOOD,
JOHN H. AMES,
W. J. LAMB,
Attorneys for Appellants.

JOURNAL PRINT, LINCOLN, NEB.

IN THE

SUPREME COURT OF THE UNITED STATES.

S. W. LITTLE, SAMUEL ARBUCKLE, D. B. ALEXANDER, A. J. SAWYER, S. G. OWEN, LORENZO ASMUSSEN, R. H. OAKLEY, SARAH J. PURCELL, A. P. S. STEWART, THOMAS R. CLARK, MARY A. MCELHAINNEY, D. C. KINSELL, HANNAH SELWOOD, ALEXANDER C. HUESTIS, W. J. VAN DORN, G. W. LASHUS, CHARLES D. C. HUESTIS, ALLEN W. HAWLEY, A. F. LEWIS, SAMUEL ARTHUR, G. F. THORNTON, SARAH CUMMINGS, WILLIAM H. RUNDELL, JACOB FREEDMAN, O. P. AUSTIN, J. A. BUCKSTAFF, MARY T. MCNAIR, GEORGE DECAMP, WILBUR F. KELLOGG, ELIZABETH N. CHASE, SARAH A. GABLE, SAMUEL AUGHEY, CLARINDA A. BUMSTEAD, ELIZABETH PADEN, MARTHA E. SNOWDEN, THOMAS WOODS, JOSEPH S. HOAGLAND, ELIZABETH W. PILLSBURY, HENRY V. HOAGLAND, W. S. GARRISON, C. L. HOOPER, S. E. STORY, V. E. FARMER, JOSEPHINE ST. LOUIS, FRANK J. WASSIKA, ELLEN N. MILLER, JOHN H. SCHWABOLD, HELEN WEBER, SAMUEL HENDERSON, CHRISTINE BOHLMAN, JOSEPH RICHARDSON, PATRICK LYONS, W. SANFORD GEE, ALLEN COGGSWELL, M. B. CHENEY, MARY E. MALONEY, EMMA A. BEACH, BARRET F. LOATH, FRANCIS D. HOWELL, L. S. HOWELL, SAMUEL D. BACON, HENRY S. GORDON, EXECUTOR OF THE ESTATE OF E. H. TUTTLE, DECEASED, JACOB FREEDMAN, SAMUEL T. ENGLISH, GUY A. BARNUM, H. O. SNOW, GEORGE WARDEN, D. D. MUIR, GEORGE W. SEVERANCE, RODY A. PRINDELL, MINA W. BROWN, W. J. VAN DORN, AND G. W. LASHUS,

Plaintiffs.

vs.

EZEKIEL GILES, L. C. BURR, H. H. WHEELER, ALBERT L. DAWSON, WILLIAM R. DAWSON, SARAH H. DAWSON, M. C. DAWSON, M. S. DAWSON, A. A. KNICELEY, WILLIAM R. J. GOODIN, MELITA C. D. TILLMAN,

Defendants.

ABSTRACT AND STATEMENT.

This is an appeal from a decree of the circuit court dismissing the appellants' original bill of complaint and adjudging upon a cross-bill filed by the appellee Giles, that the title and right of possession in certain real property therein described is in the said

Giles, and directing the delivery of the possession of the same to said Giles, and also determining the value of the appellants' improvements upon certain tracts of said real estate, and directing the amounts that may be paid therein respectively as compensation therefor, and determining the amount of appellant's liability for *mesne* profits.

The original bill was brought by the above named appellants against all of the above named respondents in the state court for Lancaster county, Nebraska, in the nature of an action to quiet the title of the appellants severally in diverse tracts of land described in the petition against certain claims of the respondents, a more full and complete statement of the nature of which is contained in the following:

ABSTRACT OF THE PLEADINGS.

BILL.

The plaintiffs severally complain that on June 15, 1869, and thence to his death, Jacob Dawson was seized in fee of (the lands in controversy). That on that date he made the will—(here copy.) That Jacob died June 22, 1869; the will was proved and Editha J. was executrix.

That when the will was made Jacob and his family resided in the basement of an unfinished sandstone building with temporary roof, unfit for a residence, because dark, damp, and unwholesome, poorly planned and constructed, and of no value. Dawson left no personal property of any value, except three or four horses, two or three cows, and some farming implements, the whole value of which was not more than $500.

That all the real estate at the date of the will was not worth more than $10,000.

At his death he was indebted over $5,000 and insolvent; that after his death it was necessary for the widow to build a dwelling suitable for the family—to do so she was obliged to raise the money on the property aforesaid, which she did, at the cost of $2,500.

To pay that and the debts of Jacob, deceased, and expenses of funeral and last sickness, she sold a large portion of the estate conveyed by the will, including (the Little, Alexander, Owen & Oakley, and A. P. S. Stewart tracts); that prior to her conveyance the lots were unimproved and vacant; that her grantees have put up two-story bricks; have expended $25,000 thereon.

That subsequent to the death of Jacob, Editha J. laid out Dawson's addition to South Lincoln (describing it), that for the purpose of raising money to discharge the said unpaid indebtedness and to advance to her oldest son Hampton, who was 21, a sum suitable to enable him to engage in business, she proceeded to sell the tract so platted, giving warranty deeds; that the following named plaintiffs derived their title in fee under her said sale and conveyance (here follows descriptions and owners); that at the time of said conveyances said lots and blocks were unimproved; that since that time the respective grantees and owners have put up houses, barns, etc., improvements thereon of the value of $20,000; that many of the plaintiffs are too poor to litigate separate suits; that Editha J., prior to her reputed marriage to Pickering, under her power in the will conveyed the following property, viz: * * to VanDorn & Lashus.

That through the above conveyances, Hawley, Warder, Snow, and Arthur became seized. (Portions given.)

That none of the defendants make any claim to any of said real estate except through deeds from the heirs of Jacob Dawson,

deceased, under the provisions of said will plaintiffs allege that none of the defendants have any interest.

That Sept. 15, 1879, the Dawson heirs and wives, Wheeler and Burr confederated to cloud the plaintiffs' title and to vex them with suits. The Dawsons, for the pretended consideration of $75,000, but without any in fact, conveyed by quit-claim deed all the property of which Jacob died seized, to Burr and Wheeler. In consideration whereof and as part of the conspiracy, Wheeler and Burr agreed to pay over one-fourth of the goods, chattels, money, etc., they should be able to extort by such suits, etc., to the Dawsons, Burr and Wheeler to retain the balance. That to insure the division of the expected plunder and to enable them to sue in the U. S. Circuit court, Burr and Wheeler executed a pretended deed to Ezekiel Giles, a man of no property, for a pretended consideration of $75,000, but on no consideration, in fact; that the deeds were not in fact delivered, but were recorded Jan. 11, 1882; that defendants pretend under these deeds that Giles has title.

That for more than a year defendants have represented to the public, etc., that Editha J. only conveyed under said will her estate for her widowhood in any of said lands, and at no time the fee, and that Editha J. marrying Pickering Nov. 15, 1879, the estate of the plaintiffs each absolutely ceased and determined.

That defendants have threatened suits for possession, rents, etc., of said premises, buildings, etc., and threaten to have Giles, father-in-law of Burr, convey and encumber said premises, that thereby plaintiffs are injured in their properties, values, etc., tenants disturbed, etc., and plaintiffs put to great expense by champerton suits.

That the VanDoren, Lashus, and Hawley lands were sold

through L. C. Burr as Editha J.'s agent since 1874, he being now and since then the confidential agent of the heirs and Editha J.; that Burr represented to them the will conveyed to Editha J. the fee simple title, with absolute power to convey; that said representations were the considerations of the purchase and were known and relied on by the purchasers.

That all the property was sold by Editha J. prior to Nov. 15th, 1879, the date of her marriage.

That since 1874, Burr & Wheeler have been attorneys at law, etc.

Prayer for an injunction against suits by the defendants, etc.

From interfering with the tenants, etc.

From making conveyances, etc.

That the deeds from Dawson's heirs to Burr & Wheeler and Giles, and Burr & Wheeler to Giles may be set aside, etc.

That the plaintiffs may be adjudged to own their lands in fee, etc.

For other relief.

GALEY & ABBOTT,
HARWOOD & AMES,
T. M. MARQUETT,
Plaintiffs' Att'ys.

AMENDED AND SUP. BILL.

(Filed Nov. 27, 1882.)

That the deed of the heirs of Dawson to Burr and Wheeler (John having previously died without issue), was without con-

sideration save the pretended consideration of the agreement to them, executed by Burr & Wheeler—[copied].

That at the time of making said deed three of the heirs, Minnie, Melita, and Evelina, were minors.

That since the execution of said deed, about Feb. 20, 1882, Minnie and Milita have disaffirmed said deed to Burr & Wheeler, and claim their title to their share and sue to recover their share; that so said deed as to three-fifths of the property herein are void, and Burr & Wheeler and Giles have no interest; that at the date of said disaffirmance said minors had arrived at their majority. That Melita C. and Minnie S. are now absolutely necessary parties hereto.

That since the deed to Burr & Wheeler, Wm. R. and Evelina have died, leaving Carleton, son of Wm. R., sole heir of William.

That on the 20th day of Feb., 1882, the said Carleton C. joined in the pleading filed herein by said Melita C. and Minnie S., which charges the facts to be, that Burr & Wheeler obtained their deed by fraud and misrepresentation from them with the sole and express intent to enable Burr and Wheeler to prosecute actions in their names for the recovery of the property thereinafter described, for the benefit of said grantors.

That the conveyance by Burr & Wheeler to Giles was made without the knowledge, consent, or privity of said grantors, in fraud of their rights under said contract, without consideration, and that Giles had full notice and knowledge; that by virtue of said deed and agreement back Burr & Wheeler took nothing but a personal trust in the property which they could not convey to Giles.

That John Hampton Dawson after he became of age, as attorney in fact of Editha J., sold and conveyed lots 3 and 4, block 47; 7, 8, and 9, block 31; 1, 2, and 3, block 38; blocks 29, 33, and 41; lots 4, 5, and 6, block 38; block 32, and 4 in block 31, all in Dawson's addition to South Lincoln, Lancaster county, Nebraska; that before said sale Jno. H. represented to the purchasers and the public generally, that Editha J. had a perfect title to all said premises; that John H., under his power of attorney, conveyed to the purchasers for Editha with full covenants of warranty, the purchasers each relying upon the said representations and covenants as true.

Plaintiff submits that as to the interest of Jno. H. Dawson, he, his heirs, the other heirs, Burr & Wheeler, and Giles are estopped from setting up any interest or claim to the premises conveyed by Jno. H. Dawson.

That Jno. Hampton, subsequently to Jacob's decease, sold and caused to be sold to Editha J. large tracts of land in controversy herein and received therefor about $9,000, which he has used as an advance and in satisfaction of an expectancy as heir both of Jacob and Editha J. Dawson.

Plaintiff submits that as to all said lands and proceeds thereof so converted and used by John Hampton Dawson he, his issue, the heirs, Burr & Wheeler and Giles are estopped from setting up any claim or title.

That a large portion of the land in controversy once owned by Jacob, now dead, since the 1st of July, 1874, has been sold by L. C. Burr acting for Editha J. Dawson, in co-operation with W. R. Dawson, they representing and stating to purchasers, who relied thereon, and to the public generally, that Editha J. had a perfect title in fee simple to all said lands and that the purchasers implic-

itly relying on such statements have paid the purchase price, gone into possession and made valuable improvements thereon, a description of which appears in the proofs now taken.

That Ezekiel Giles never paid Burr & Wheeler any valuable consideration for said property but executed the following contract, * * *

That said last named deed and agreement do not purport to convey to Giles any interest in the lands in controversy, which fact is made further to appear by the following power of attorney executed by Ezekiel Giles and wife to Lionel C. Burr, viz: * * *

Plaintiff submits that the surviving heirs of Jacob Dawson, Carleton, and Burr & Wheeler are the sole parties interested in this action.

That the whole of the money consideration received by the said Editha J. for block 54 was used by her and her agent at her direction in paying the debts of Jacob, deceased, to the amount of $5,000 and upwards, which existed before time of his death against him, and for building a suitable dwelling for Editha J. and her children, said heirs of Jacob, deceased.

That Wm. R., Albert L., Melita C., Minnie S., heirs of Jacob, L. C. Burr, and Wheeler entered into a conspiracy that Editha J. should marry to defeat the estate she had conveyed to one H. M. Pickering; that after a two weeks' postponement made to complete the execution of a contract between Burr & Wheeler and said heirs, said marriage was consummated through the conspiracy and connivance of said parties for the purpose of enabling said Burr & Wheeler to defeat said estate, and after said marriage had been postponed two years to enable said Burr and William R. Dawson and said Editha J. Dawson to sell the residue of said estate unsold, as the property of Editha J. Dawson.

That immediately after said marriage, said William R. and Albert L. compelled Pickering to live apart from said Editha J., and William R. avowed that the purpose of said marriage was to enable said heirs on said marriage to recover all said real estate which belonged to Jacob Dawson, deceased, and sold as aforesaid.

That April 1st, 1880, Burr & Wheeler deeded to C. C. Burr certain property in controversy (describing it), secretly, without consideration, to cloud and encumber the same; that said deed was not recorded but had been secretly withheld from the record.

That the heirs of Jacob Dawson, and all persons claiming under them, ought to be estopped from setting up title to said premises, etc.

T. M. MARQUETT,
HARWOOD & AMES.

ANSWER OF EZEKIEL GILES.

Denies that the dwelling of Jacob Dawson was not a fit residence, etc.; denies that Jacob left no personal property except that mentioned in the bill; denies that all his real estate of which he died seized, was worth only $10,000, or that he was largely indebted in sums of $5,000, or was insolvent, or unable to pay his debts, or that Editha J. was compelled to, or did, sell to raise money to build a suitable dwelling, or pay his debts, or that any part of the premises in controversy were sold for any such purpose; or any of the lands in the bill described to pay Jacob's debts, or to advance to Hampton, or that any of the persons claiming title to the lands in addition to South Lincoln are too poor to employ counsel for separate suits, or that any of the defendants in this suit save Giles, have, or claim any interest in the lands in controversy; denies confederacy charged in the bill, or suits save to recover possession, etc. Denies deed mentioned in

the bill was made to enable suit to be brought in U. S. Circuit court, or that the defendant is a man of no property, or that said deed was never in fact delivered to him or accepted by him, or that defendant has threatened to convey any of the premises; denies any of the premises were ever sold by Editha J., on the statement of Burr or Editha J. that she had the fee in said premises, or power to sell the same in fee.

II.

That June 15, 1869, Jacob made the will in Lancaster county; June 22, '69, he died and his will was probated and letters testamentary issued to Editha J., who qualified, filed an inventory of $958, appraised as all; she did no other act as executrix; Jacob seized of the land in the bill described, leaving Editha J., Jno. Hampton, Albert L., Wm. R., Melita C., Minnie S., and Evaline, sons and daughters. Evaline married Kniceley, and on Nov. 15, 1879, Editha J. married Pickering. Defendant insists under the will Editha J. took a life estate in the premises, and the plaintiffs took no greater, and that the estate was determined by the marriage of Editha J. and the heirs took a fee which ought to be quieted in this defendant.

III. That Aug. 23, 1880, this defendant sued Little and his tenant, etc.; that Little appeared and defended; that the Circuit Court rendered judgment; that Editha J. took a fee under said will, which judgment was, on Dec. 12, 1881, reversed by the Supreme Court of the United States; that Little has now pleaded in abatement to said action.

IV. Jan. 27, 1882, this defendant sued Martha Alexander to recover part of lot 4 and 5 in block 54; that defendant alleged the will, marriage of Editha J., and conveyances by divers mesne conveyances to defendant, and seizure of defendant, praying for

judgment, for possession, etc.; that summons was issued and served before commencement of this suit.

V. Jan. 27, 1882, a like suit was brought against A. P. S. Stewart, for parts of lots 3 and 4, block 54.

VI. That Jan. 27, 1882, a like suit was brought against Owen & Oakley, for part of lots 5 and 6, in block 54.

VII. That defendant only prosecuted said suits in an orderly manner to vindicate his rights to said property as defined by the Supreme Court, and not vexatiously.

VIII. Certain of the plaintiffs, Little, Alexander, Owen, Oakley, and Stewart, and their attorneys, Galey & Abbott, Harwood & Ames, and T. M. Marquett, after judgment in Supreme Court, conspired, etc., obtained from records of deeds names of all or nearly all the Dawson estate lands described in the bill and impleaded them as plaintiffs in this without their knowledge or consent. (Here follow the names.)

That the object of impleading the above named parties was to avoid the judgment of the Supreme Court of the United States by transferring the controversy to courts of the state of Nebraska which had never construed said will, and to impose upon defendant great expense and deprive him of his right to prosecute claim in Federal Court.

IX. That at Jacob's death Editha J. had in her own right real estate and personal estate of the value of $10,000.

That she employed Galey under a written power of attorney to do her business and see to and convey her estates; he laid out Capitol addition, Dawson's addition to South Lincoln, and sold lots amounting to $20,000 in Capitol addition, and not less than $75,000 in all, and if any person bought, believing they obtained the fee, it was on Galey's advice.

X. In the execution of said trust Galey fraudulently appropriated a large part of the proceeds of said sales to his own use without accounting, and dishonestly, etc., squandered the whole estate and proceeds till Editha J. and children are now destitute, etc.

He fraudulently compelled her to mortgage the Hawley, Arthur, and Snow tracts for $5,500 @ 12 per cent, contracting that out of the proceeds there should be paid a premium on his own life, on a policy of insurance for $25,000, payable to Mrs. Warner; subsequent premiums were paid out of Editha J.'s funds, all of which was done without her knowledge, nor was any portion of said loan ever paid to her; that she made to Freeman Nickerson a mortgage of said premises, that Hawley, Arthur, Warden, and Snow purchased of Nickerson with full actual notice, etc.

XI. That Stewart purchased Nov. 15, 1881, with full knowledge of the will and the pendency of the suit against Little, at two-thirds their value, taking a quit-claim deed. Owen & Oakley purchased with full knowledge of the terms of the will and of the pendency of said action, and took a quit-claim deed because of the inadequacy of the consideration.

XII. Defendant denies that defendants have ever threatened to disturb occupants of improved parts of Dawson's addition to South Lincoln.

XIII. Denies on information and belief $25,000 improvements or any considerable portion thereof on lands claimed by Owen & Oakley, Alexander, or Stewart, admits plaintiffs respectively claim the several parcels alleged in the bill under deeds made by Editha J., and that considerable improvements have been made, etc., but does not know the value, etc.; denies plaintiffs, or their grantors, since death of Jacob, have had any estate or interest in any of the premises.

XIV. Denies deed to Burr & Wheeler as alleged in bill, and allege the deeds were deeds with covenants for title, and says the consideration was $200 and the agreement to pay one-third the value of the property they might recover of the plaintiffs; that said deeds left no title or right remaining in said Dawsons; that plaintiffs are strangers to said enquiry; defendant admits about April 27, 1880, Burr & Wheeler executed deeds to defendant without covenants, but deny they were made to enable suits to be prosecuted in courts of the United States, that said deeds were recorded Jan. 11, 1882, and thereby defendant became seized of the premises; that now and for a year prior to this suit he has claimed the property under the terms of said will.

Defendant denies all confederacy, etc.

J. M. WOOLWORTH,
of Counsel.

L. C. BURR,
Sol. for Defendant.

ANSWER OF GILES TO AM. AND SUP. BILL.

This defendant says:

1st. That the deeds to Burr & Wheeler, Sept. 15, 1879, were executed by Wm. R., Sarah H., his wife, Melita C., since married, and Minnie S., then and still a minor; the other by Albert, Mahala J., his wife, and Kniceley and Evaline, his wife, who was a daughter of Jacob, deceased; that they were executed and delivered on the day they appear to have been acknowledged. Jno. Hampton Dawson died in 1871. The consideration for said two deeds was $200 cash, paid by Burr & Wheeler, and the agreement set out in the 3d page of the supplemental bill.

2d. Denies that Evaline Dawson Kniceley was a minor when she executed the deed; denies that either Evaline, Melita C., or Minnie S. did or could have disaffirmed their deeds to Burr &

Wheeler; that said Minnie is still a minor and that Melita C. attained her majority by marriage and executed her deed of confirmation January 2, 1882. Denies that Minnie S. or Melita C. are necessary or proper parties to this suit, or that the issues therein are not wholly between this defendant and plaintiff.

3d. Since said deeds were made, Dec. 25, 1880, Wm. R. died leaving a son Carlton; that said Evaline died Feb. 1, 1881; that after this cause was removed from the state courts, said pleading on cross-bill was filed in the state court without authority of law, does not know the contents or whether correctly stated in the Sup. and Am. bill or not, but defendant denies that either of said deeds were obtained by misrepresentation or fraud, or were made for the intent to enable Burr & Wheeler to prosecute actions in their own names, or that Burr & Wheeler's deed to Giles was made in fraud of the rights of said grantors or without consideration, or that defendant had any knowledge of the right of the heirs of Jacob Dawson at or before he took the conveyance.

4th. Has no knowledge that Jno. Hampton, acting as attorney in fact of Editha J., made the representation to purchasers as in the bill alleged, but that as said John H. died before Editha J. married, no estate ever vested in John H. or came through him to this defendant wherefore defendant has not been estopped, etc. Does not know that Jno. H. converted to his own use any advance in satisfaction of any part of his interest or expectancy in said premises.

5th. Denies that L. C. Burr ever represented to the purchasers from Editha J. that she had a good and perfect title to said premises or that purchasers relied on any such representations, or entered or made improvements in reliance thereon.

Denies that he paid no consideration to Burr & Wheeler for the deed from them to him or that the deed passed no interest in the estate, or that it so appears by the said power of attorney, or that the surviving heirs, or Burr & Wheeler are the sole parties in interest adverse to plaintiffs; that Burr had no knowledge of said will or its terms until Sep. 12, 1879, nor did he ever state its terms or effects to any of the plaintiffs or discuss it with them while they had seen and read the same and knew its contents.

VI. That Jan. 27, 1882, deft. brought his action against Owen & Oakley to recover (their) lot in block 54; that they answered, pleading in abatement that the conveyances by heirs to Burr & Wheeler and by Burr & Wheeler to this defendant were without consideration, and contrived to make a case cognizable in this court, which plea was heard and overruled, and the judgment thereon remains still of record, etc. That plaintiffs are concluded by said plea.

VII. Denies that all or any of the money received by Editha J. from block 54 was used by her, etc., for the payment of the debts of Jacob, deceased, or in building suitable dwelling, etc., or that defendant is estopped, etc.

VIII. Denies that Burr & Wheeler or the heirs contrived the marriage or procured the separation.

IX. Denies that Burr & Wheeler made the deed to C. C. Burr.

X. Denies confederacy, etc.

J. M. WOOLWORTH,
of Counsel.

L. C. BURR,
Att'y for Giles.

This suit was begun on the 27th day of January, 1882. On the 20th day of February, 1882, while the state court, in which said action was pending, was in vacation, the defendant Giles filed his separate petition for the removal of said cause to the circuit court, and on the same day there was filed in said court a paper purporting to be a disclaimer by L. C. Burr, H. H. Wheeler, Albert L. Dawson, M. S. Dawson, and M. C. D. Tilman. On the 21st day of February, 1882, said state court being still in vacation, the said defendants Dawson filed an answer in the said state court, putting in issue all of the material averments to plaintiffs' bill and attacking and seeking to set aside the said claims and titles of their co-defendants. The state court convened on the 27th day of February, 1882, and on the first day of March a petition for removal of Giles was first presented to that court and an order of removal entered therein. This petition omitted to state the citizenship of any of the defendants to the plaintiffs' petition, except that of the defendant Giles, nor was there anything elsewhere than in said petition showing such citizenship. On the 28th day of February a transcript of the record in said cause was filed in the circuit court. On the 5th day of April Giles filed a cross-bill, also in the nature of a bill to quiet the title, seeking to have the title to the property in the complainants to original bill canceled and set aside, and that he be let into the possession of the demanded premises, a more full account of which is found in the brief hereto annexed. On the 1st day of March, 1882, appellants filed a motion in the circuit court to remand said cause, on the ground that the same was not one of those causes removable by the act of congress, and that Giles, the party seeking the removal, was only a nominal and colorable defendant therein, and that Burr, Wheeler, and the heirs of Dawson were the real parties in interest, and were citizens of the state of Nebraska, with the plaintiffs, upon which motion no order was ever made. Thereafter the proofs were taken upon the issue so joined between the

parties, and there was put in evidence as going to show that Giles, the removing party, had no real interest, and that Burr and Wheeler were the real parties in interest, deeds and contracts showing that the conveyance from Burr and Wheeler to Giles, who was Burr's father-in-law, was made without consideration and was a mere quit-claim, and accompanied by express declarations and stipulations that the conveyance of the property was upon the express trust for the use and benefit of Burr and Wheeler and the Dawson heirs, citizens of the state of Nebraska. Copies of said declarations of trust are set out in the brief hereto annexed. Evidence was also adduced showing conclusively that Giles was insolvent, and a man of no property; that he had never negotiated in any way to purchase this property; had never seen it or known its value, and his declarations that he had no interest in it; besides which there is additional testimony of like import. The answer to the cross-bill raised the question of citizenship and insisted that the court had no jurisdiction to try the cause. The question of citizenship was never directly passed upon or adjudicated by the circuit court. The complainant in the cross-bill insisted and averred that he had title to the premises by virtue of the will of one Jacob Dawson, the common source of title, and through mesne conveyances under said will from his heirs, and that the defendants to the cross-bill held only the life estate of the widow Dawson, terminable upon the marriage of the widow of Jacob Dawson, through whom the appellants had received conveyances, under claim by her that she was the owner in fee of the premises, and that under and by virtue of the will of Jacob Dawson she had power to convey the fee. That the plaintiffs in the original bill, and also in their answer to the cross-bill alleged, and at the hearing produced proofs so and as was contended establishing that the defendant L. C. Burr and certain of the defendants, heirs of Jacob Dawson, were and of right ought to be estopped from asserting title to any portion of

said premises, or any interest therein, on account of their having participated in the sale and negotiations of the sale of the larger portion of the premises to the appellants in the original bill. In December, 1882, the court appointed a receiver over all of the property, without any showing whatever that the parties in possession of the same were not responsible to answer any decree that might be rendered against them. On the 23d day of February, 1883, at the January term of the circuit court, a decree was passed, adjudging that neither said defendant Burr nor any of the Dawson heirs were or ought to be estopped from asserting title to any of said land and dismissing the original bill. At the next or May term of said court, to-wit, on June 14th, 1883, another decree was passed, adjudging the title to said lands to be in the complainant in the cross-bill, Giles, adjudging that none of the children of Jacob Dawson or the said L. C. Burr, or any person claiming under any of them, or through either of them, was estopped from asserting title to said premises, decreeing the title in fee in all the said premises to be in said Giles, and decreeing that the original bill be dismissed, that the cause stand continued for further hearing upon the cross-bill, and ordering a reference to ascertain the value of the property in controversy in the cross-bill, for mense profits thereof, and to ascertain the value of improvements and the rights of the parties under the occupying claimants law of the state of Nebraska; and at the same term of the court, to-wit, on the 17th day of October, 1883, an application to appeal from this decree was formally granted; the cause then proceeded upon the cross-bill of Giles and the issues thereon raised alone; the said reference was had, proofs taken, and report made on divers of such issues, and upon the matter embraced in the orders of reference aforesaid, and not until September 5th, 1884, one of the days of the May term of that year, was a final decree rendered thereon. Upon the references to the master to report upon the buildings, improvements, rents,

etc., appellants made eleven requests to the court for directions in reference to the master, set out on page fifty-six of the brief, in order to obtain their rights under the occupying claimants law and in accordance with the principles of equity, as occupying claimants of the lands, all of which were refused by the court in passing its decree upon the hearing before the master. The master proceeded in accordance with the restricted references in the direction of the court to consider the proofs as to the value of the improvements, the rents and profits of the same, and the amount of taxes paid thereon, rejecting, however, and refusing to consider the testimony of twelve of the principal witnesses adduced by the complainants as to the value of their improvements, a full statement and description of which is given at pages 61 to 69 of the brief. Exceptions were filed to the master's report, which also there appear, all of which were overruled in the entry of the final decree. That on the 30th of January, 1883, after all the proofs in the principal cause were closed, and at the same term a decree upon the original bill was entered, the court appointed a guardian *ad litem* for two of the minor Dawson heirs, citizens of the state of Nebraska, who had theretofore filed their answer in said circuit court, putting in issue all the material allegations of the appellants' bill. That on the 30th of January, 1883, such guardian accepted the proof already taken in the cause and submitted their rights thereon after having under leave of court filed a further answer to the plaintiffs' original bill. The counsel of Giles in the cause was appointed their guardian, and upon the entry of the final decree the court allowed the sum of $500 to such guardian of the infant defendants, which was taxed as costs against the appellants. The final decree upon the cross-bill simply directs the defendants therein to surrender and deliver up the possession of the premises severally held by them to the complainant Giles upon demand and payment to them of certain sums by way of compensation for

improvements, and in case of refusal, authorizes the marshal to evict them, and provides for the payment of the moneys in the receiver's hands to Giles.

ASSIGNMENT OF ERRORS.

Appellants contend that these decrees and orders are erroneous—

First. Because it appears from the record and testimony that the suit does not really and substantially involve a controversy between the said Giles and these appellants or any of them, and that the said Giles is the only one of said respondents who is a citizen of a state different from that of all the appellants, and on the opposite of said controversy from these appellants.

Second. That it appears from the record and testimony that the lands in controversy were conveyed to the defendant Giles by the defendants Burr and Wheeler collusively, and for the purpose of making a cause cognizable by the circuit court, and that said Giles has no real or substantial interest or estate therein, and that said conveyance was colorable only.

Third. That said suit having been begun in the courts of the state of Nebraska, between the appellants as plaintiff, part of whom are citizens of said state, and the respondents, all of whom except Giles, are citizens of said state, and removed thence to the circuit court, upon the petition of said Giles alone, the same was improperly removed to, and tried in, said circuit court, and the circuit court had no jurisdiction thereof, because there is and was at the beginning of said suit or date of such removal, no controversy between said plaintiffs or any of them and said Giles, which is or was separable from the controversy between said plaintiffs and the respondents, other than Giles, who were,

at the date of the beginning of said suit and of said removal thereof, citizens of the same state as a part of said plaintiffs.

Fourth. That said decree is erroneous in that it adjudges "that the children of the testator, Jacob Dawson, have not, nor has said L. C. Burr, nor any person or party claiming under or through him, nor has either of said parties at any time committed or suffered any act or thing whereby they or any, or either of them is or ought to be estopped to assert title to said premises against the plaintiffs or any or either of them."

Fifth. That the matters litigated, adjudged, and decreed upon the cross-bill in said suit filed by the respondent Giles were matters of which the circuit court had no jurisdiction in equity, the same being the assertion, as is claimed by said cross bill, of a legal title and right of possession in real estate in the possession of the plaintiffs, and for *mesne* profits thereof, for all of which there are plain, adequate, and complete remedies at law.

Sixth. That the dismissal of the original bill was a dismissal of the cross-bill also, and that the retention of the latter and the rendition of a decree thereon more than a year after such dismissal was erroneous and without jurisdiction.

Seventh. That the circuit court had no jurisdiction in equity to determine by a reference to a master or otherwise the value of the real estate demanded in the cross-bill of Giles, and in the possession of the appellants, or the value of the improvements put thereon by appellants, nor the amount recoverable by said Giles as for *mesne* profits thereof.

Eighth. That said decree is erroneous in that it determines that the said "Giles is seized in fee of said premises and all thereof," whereas it appears from the record and testimony that he is not

so seized, but that such seizin is in these appellants of their several tracts in severalty.

Ninth. That the circuit court erred on the trial of said cause in denying to the defendants to the cross-bill the benefits of the statutes of Nebraska relating to the occupying claimants of land.

Tenth. It erred in denying the formal application of the defendants and appellants for a reference to a master, comprehending only substantially that what they were entitled to under said statutes of Nebraska. (See brief.)

Eleventh. That the circuit court erred in denying to the appellants the rights which they were entitled to as occupying claimants of said lands according to the principles of equity. (See brief.)

Twelfth. That the court erred in limiting its reference to the master as to the character and value of the improvements in its decree.

Thirteenth. That the court erred in not requiring the complainants in the cross-bill to pay to the appellants the value of the improvements put upon the property to the extent the same enhanced the value of the property recovered.

Fourteenth. That the court erred in sustaining the ruling and decision of the master and overruling the exceptions of these appellants in excluding, rejecting, and not considering the testimony of the twelve witnesses as to the value of the improvements upon the premises. (See brief.)

Fifteenth. That the court erred in its decree in charging these appellants with the rents upon their own investments and improvements placed upon the lots recovered as well as the lots themselves from June 13th, 1880, to December 31st, 1882.

Sixteenth. That the court erred in charging the appellants and occupants with the rents and profits upon the premises before they received notice of the successful claimants' title by service of process contrary to the statutes of Nebraska.

Seventeenth. That the court erred in overruling the exceptions to the Master Kelly's report in stating the account between Giles and each of the occupants of the several tracts as shown in the brief.

Eighteenth. That the court erred in finding the amounts due to each of the occupants upon the taking of the account of the rents and profits and of the value of the improvements.

Nineteenth. That the court erred in disregarding the statutes of Nebraska in its decree relating to the taxes paid by the occupants of the several tracts recoverable by appellants from the successful claimant of the property.

Twentieth. That the court erred in the appointment of a receiver in the cause.

Twenty-first. That the court erred in awarding $500 costs against the appellants allowed to the guardian *ad litem* of certain infant defendants to the original bill.

Twenty-second. That the court erred in construing the will and in disregarding section 124 of the Compiled Statutes of Nebraska of 1881.

BRIEF FOR APPELLANTS.

On the 27th day of January, 1882, the plaintiffs begun an action in the district court of the state of Nebraska, for Lancaster county, in the nature of an action *quia timet*, charging in their petition that they were the owners, and in the possession of divers tracts of real property, situate in said county, and that the defendants therein, heirs of one Jacob Dawson, deceased, and also the de-

fendants Burr and Wheeler, and Ezekiel Giles, had entered into an unlawful conspiracy for the purpose of clouding and encumbering the said titles of the plaintiffs and to disturb and harass them in their possession of the same by various and vexatious suits and proceedings at law, and by means thereof put the plaintiffs to great trouble and expense and extort large sums of money from them. That pursuant to said conspiracy divers such suits had been begun and were threatened, and about to be begun, and that pursuant thereto and solely in consideration thereof, divers pretended conveyances of said property, and of portions thereof had been made and were threatened, and about to be made, and that particularly the whole thereof had been so attempted and pretended to be conveyed by the said Dawson heirs to the said Burr and Wheeler, and by the said Burr and Wheeler to the said Giles. That in fact, however, such pretended conveyances were upon no valid or valuable consideration, but were made solely for the purpose of carrying out the objects of said conspiracy, and that the said Giles was a non-resident of the state and a person of no pecuniary responsibility, and that said pretended conveyance was made to him for the sole purpose of providing a safe and convenient tool by means of which the enterprise could be worked, its objects promoted, and the gains hoped to be derived from it, distributed among the remaining defendants who still continued as principals in interest. That all the said defendants pursuant to such conspiracy united in defaming the titles of the plaintiffs and disturbing and annoying them and their tenants in their possessions by divers means set forth in the petition, and that finally as to certain of the property in controversy the defendant Burr and certain other defendants, by reason of certain circumstances, was estopped from claiming title adverse to the plaintiffs.

The petition concluded with a prayer that each and all the de-

fendants be enjoined from continuing, attempting, or doing any of the acts complained of, or any similar acts. That the several pretended conveyances from the Dawson heirs to Burr and Wheeler, and from Burr and Wheeler to Giles be adjudged fraudulent and void, and be canceled, and that the plaintiffs be quieted in their several titles and possessions against each and all of said defendants, and all persons claiming under or through them or either of them. In a supplemental bill filed after the removal of the cause to the circuit court, printed record, page 371, certain additional matter is pleaded in support and modification of the allegations of the principal bill and in estoppel of certain interests of the Dawson heirs, and averring that the latter and Burr and Wheeler were the sole parties in interest, the attempted conveyance to Giles being merely colorable.

On the 20th day of February, 1882, the defendant Giles filed his separate petition for a removal of said cause to the circuit court (Record, page 35), and a purported transcript thereof was filed and docketed therein on the 28th day of that month, and on the fifth of April following, Giles filed a cross-bill (Record, 55) to which on the 10th of May thereafter the plaintiff filed an answer (Record, 64) pleading substantially the same matter as that contained in their original and supplemental bills, together with the additional averments that the defendants Burr and Wheeler and the Dawson heirs, as well as the plaintiffs, were citizens and residents of the state of Nebraska, and that the said conveyance to Giles was colorable and collusive, and made solely for the purpose of making a cause cognizable by the circuit court. On the 1st day of March, 1882, this latter matter was also brought to the attention of the court by a motion to remand (Record, 38), but no action was ever taken thereon. The proofs, so far as they are material to the issue as to the conveyance to Giles being collusive, for the purpose of conferring jurisdiction on the circuit court, are substantially as follows:

On the 15th day of September, 1879, Albert L. Dawson and others, heirs of one Jacob Dawson, deceased, claiming to be the owners, under a will executed by said Jacob Dawson, of certain real estate situate in Lancaster county, Nebraska, all of which was then in the adverse possession of divers persons claiming to own the fee simple title to their respective tracts, by virtue of divers *mesne* conveyances from one Editha J. Dawson as devisee and executrix under the same will, executed and delivered a deed purporting to convey the same to one Lionel C. Burr and one Hiland H. Wheeler as joint tenants. On the same day a like deed to the same lands was executed and delivered by one William R. Dawson and others, heirs of said Jacob, under a like claim, to the said Burr and Wheeler. Neither of these deeds contained any express covenant of seizin or of title, and they remained in the possession of the grantees unrecorded until January —, 1882. It is not clear when or how much, or if any money consideration was paid by the grantees for these deeds, or either of them. Burr testified to having paid William R. Dawson two hundred dollars, but he does not say expressly upon what consideration, nor whether for the use of the other grantors. Albert testifies expressly that he received no money or other consideration. That no such consideration was paid is inferable from the fact that on the 10th day of November, 1879, the said Burr and Wheeler executed to the grantors in both deeds jointly a declaration of the trust upon which the conveyances were made, which is in words and figures following, viz.:

"This instrument made and entered into this 10th day of November, 1879, between Lionel C. Burr and Hiland H. Wheeler, both of Lancaster county, Nebraska, party of the first part, and William R. Dawson, Albert Dawson, Minnie Dawson, Melita Dawson, and Evaline Dawson Knicely, heirs at law of Jacob Dawson, deceased, parties of the second part,

"Witnesseth: That the said parties of the first part do hereby agree with the said parties of the second part, that whenever the said parties of the first part shall come into the possession and be seized in fee simple absolute of the estate or any part thereof conveyed by said parties of the second part to said parties of the first part, then said parties of the first part shall quit-claim to said parties of the second part the one-third undivided interest which they as tenants in fee simple have in said premises, or at the election of the said parties of the first part pay to the said parties of the second part the value of said undivided one-third interest of said estate in cash.

"In witness whereof the said parties have hereunto set their hands and seals the day and year above first written, and if any money comes into the hands of us by way of settlement of suits herein, one-third thereof we will pay to parties of second part, after deducting expenses.

"(Signed) L. C. BURR,
"HILAND H. WHEELER.

"Witness and signatures,
"(Signed) H. P. KEMP."

"For value received, to-wit: The sum of five dollars in hand paid by the heirs of Jacob Dawson, the receipt whereof is hereby acknowledged, we do hereby jointly and severally guarantee the performance and fulfillment by said L. C. Burr and H. H. Wheeler of the within agreement with said heirs and all the conditions thereof mentioned therein.

"(Signed) C. C. BURR,
"J. R. WEBSTER,
"A. D. BURR,
"FRANK L. SHELDON,
"WILLIAM M. CLARKE.

"Dated Lincoln, Nebraska, Jan'y 14, 1882."

On the 15th day of September, 1879, Albert L. Dawson and others, heirs of one Jacob Dawson, deceased, claiming to be the owners, under a will executed by said Jacob Dawson, of certain real estate situate in Lancaster county, Nebraska, all of which was then in the adverse possession of divers persons claiming to own the fee simple title to their respective tracts, by virtue of divers *mesne* conveyances from one Editha J. Dawson as devisee and executrix under the same will, executed and delivered a deed purporting to convey the same to one Lionel C. Burr and one Hiland H. Wheeler as joint tenants. On the same day a like deed to the same lands was executed and delivered by one William R. Dawson and others, heirs of said Jacob, under a like claim, to the said Burr and Wheeler. Neither of these deeds contained any express covenant of seizin or of title, and they remained in the possession of the grantees unrecorded until January —, 1882. It is not clear when or how much, or if any money consideration was paid by the grantees for these deeds, or either of them. Burr testified to having paid William R. Dawson two hundred dollars, but he does not say expressly upon what consideration, nor whether for the use of the other grantors. Albert testifies expressly that he received no money or other consideration. That no such consideration was paid is inferable from the fact that on the 10th day of November, 1879, the said Burr and Wheeler executed to the grantors in both deeds jointly a declaration of the trust upon which the conveyances were made, which is in words and figures following, viz.:

"This instrument made and entered into this 10th day of November, 1879, between Lionel C. Burr and Hiland H. Wheeler, both of Lancaster county, Nebraska, party of the first part, and William R. Dawson, Albert Dawson, Minnie Dawson, Melita Dawson, and Evaline Dawson Knicely, heirs at law of Jacob Dawson, deceased, parties of the second part,

"Witnesseth: That the said parties of the first part do hereby agree with the said parties of the second part, that whenever the said parties of the first part shall come into the possession and be seized in fee simple absolute of the estate or any part thereof conveyed by said parties of the second part to said parties of the first part, then said parties of the first part shall quit-claim to said parties of the second part the one-third undivided interest which they as tenants in fee simple have in said premises, or at the election of the said parties of the first part pay to the said parties of the second part the value of said undivided one-third interest of said estate in cash.

"In witness whereof the said parties have hereunto set their hands and seals the day and year above first written, and if any money comes into the hands of us by way of settlement of suits herein, one-third thereof we will pay to parties of second part, after deducting expenses.

"(Signed) L. C. BURR,
"HILAND H. WHEELER.

"Witness and signatures,
"(Signed) H. P. KEMP."

"For value received, to-wit: The sum of five dollars in hand paid by the heirs of Jacob Dawson, the receipt whereof is hereby acknowledged, we do hereby jointly and severally guarantee the performance and fulfillment by said L. C. Burr and H. H. Wheeler of the within agreement with said heirs and all the conditions thereof mentioned therein.

"(Signed) C. C. BURR,
"J. R. WEBSTER,
"A. D. BURR,
"FRANK L. SHELDON,
"WILLIAM M. CLARKE.

"Dated Lincoln, Nebraska, Jan'y 14, 1882."

On the 27th day of April, 1880, Burr & Wheeler executed to the plaintiff a deed of all the property above mentioned. This deed, like those before described, contained no express covenant of seizin or of title. The certificate of acknowledgment thereto is dated June 11th, 1880—nearly two months after the date of the instrument. It is not pretended that any money or valuable consideration was ever paid for this deed. Burr testifies that the sole pretended consideration ever claimed to have been paid was about the sum of two hundred dollars, obtained by him as the attorney of plaintiff upon the compromise of an ejectment suit brought by the plaintiff for the recovery of a portion of this real estate, for which he gave the plaintiff "credit;" all or a portion of which he had expended in the prosecution of other like suits.

Whether the plaintiff ever had any knowledge either of the "credit" or expenditure, the record does not disclose.

That the deed was never in fact delivered to the plaintiff or accepted by him as a conveyance of the property therein described seems equally clear. Concerning this matter we have the testimony of the witness Parker as to the plaintiff's admissions to witness' brother on January 31st, 1882, which is as follows: "My brother asked him if he did not own land in Lincoln. He said 'No, if he did he did not know it—none that he knew of.' My brother asked him if there was not a suit pending there now about some property? He said 'Yes, but it was not decided yet.' My brother asked him if he was one of the heirs. He said he 'presumed not in point of law; said he was not posted though; did not know much about it, and wanted him to correspond with Burr & Wheeler.' He told him that the parties had looked up his financial record, saw he was not able to pay $75,000 for that property. He said, 'O thunder! Is it worth that much?' He told him that was the consideration in the deed conveying it to him. He said he had given an ample bond, and it was none of

their business, and told him again to correspond with his attorneys about the lands.'"

The witness Filmore testified concerning a conversation he heard between the plaintiff and Galey: "Galey asked him if he had the deed in his possession that conveyed the lands to him? He said 'No.' He asked him next if he had ever seen the deed or knew what property it conveyed? He said he had never had the deed in his possession. Then Mr. Galey asked him whether he knew the property described in the deed was property in Lincoln. His answer was that he supposed a considerable portion of it was property in Lincoln City."

The witness Gaily testifies concerning the same conversation: "I asked him if he had the deed in his possession, this conveyance made by Burr & Wheeler to him of this property. He said he had not. I asked him if he had ever had it. He said he had not. I asked him if he had ever seen it. He said he had not. I asked him if he had ever seen the property it purported to convey? He said he had not. I asked him if he had ever been in Lincoln. He said he had not."

The plaintiff himself was sworn as a witness in his own behalf, and his attention called to these conversations. He omits to deny that the portions of these conversations above quoted took place precisely as related by the witnesses. He says that among other things, Galey asked him "If this was brought in my name for the purpose of carrying it to the United States court." I told him emphatically, "No!" He then relates some other portions of the conversation, but does not assume to give the whole conversation or deny Galey's or Filmore's version.

And so concerning the conversation with Parker, he gives this fragment: "He commenced and said, 'You have got property in Nebraska, haven't you?' I said, 'I did not know. There

was some property there in litigation, and no man knew whether he owned anything or not until it was decided.'" But he does not contradict Parker or pretend to give the whole conversation. The plaintiff's son, C. P. Giles, was also sworn as a witness on behalf of the plaintiff, and testified concerning the conversation with Parker, but like his father he does not assume to give the whole conversation, relates some portions not given by either his father or Parker, and omits portions given by his father and by Parker, not denying that either version is correct so far as it goes, except that he claims to have held that part of the conversation about the bringing of the suit, which his father claims to have had himself.

In further support of the theory that the deed was never delivered to Giles or accepted by him as a conveyance of the property therein described, we have the testimony of Burr that the deed was executed at the time of its date, April 27th, and retained in his possession until about the date of its acknowledgment, June 11th, 1880, when he gave it to his wife to carry with her on her visit to her father; that on her return from that visit she brought the deed with her and returned it to him, or else previously mailed it to him, and that the same has ever since been in his possession and in the possession of Wheeler; that they withheld it from record for reasons of their own until January—, 1882, when they recorded it together with the Dawson deed, on hearing that Albert Dawson had deeded the property to Goodin. He further testifies that negotiations with the plaintiff about deeding to him were not concluded until about the date of the acknowledgment of the deed on June 11th, and narrates, as does also Wheeler, that a short time before the commencement of the suit against Bacon on June 28th 1880, he had prepared pleadings for a suit against one Sherwin, in the state court, but that before filing, his attention was drawn to the case of Brandt against the Virginia Coal and Iron Company, now re-

ported in the 3d Otto, which convinced him that it was better to sue in the United States court; that they then brought the Bacon suit, and afterwards employed counsel, upon whose advice they dismissed the case and began the case now pending against Little.

Wheeler testifies that the Brandt case determined Burr and himself to sue in the U. S. court; that he saw it a few weeks before beginning the Bacon case. Replying to the question, "Might it have been as much as three or four weeks?" He answers, "I think not. I know it was between the time we concluded not to bring the Sherwin case and commenced the case against Bacon, and that followed right along within a week or so."

So it appears clearly that the conveyance to Giles, the seeing of the Brandt case, and the changing of purpose with respect to *forum* were all practically contemporaneous events.

Wheeler also testifies that he exhibited the power of attorney hereinafter mentioned to C. P. Ross, and told him that he regarded it as just as good to him as a deed.

Albert Dawson testifies, and is not contradicted, that when he complained to Burr about the conveyance to Giles, Burr assured him that the conveyance was only "for the purposes of this suit," the suit against Little being then pending.

Oakley testifies, and is uncontradicted, that he negotiated with Burr about a settlement, and Burr told him that he could carry out the terms of the agreement; that he could control the suit in the U. S. court.

Burr writes to Albert Dawson, July 23d, 1880, after the conveyance to Giles, but six months before Dawson was aware of it, and makes no allusion to the conveyance or to Giles, but dwells on the possible fortune in store for himself and the heirs. He

begins by mentioning the case of "Dawson Heirs vs. Bacon," and writes: "I have brought the case in the U. S. circuit court so I can go to the supreme court of the United States, where they have a decision in a will case just like this."

Ross testifies that Wheeler told him he had a deed from Giles to protect his interest, and that a further agreement was entered into between Giles and Burr and Wheeler concerning the property during this trial.

Van Dorn testifies Burr told him he was compelled to make the transfer to Giles in order to get jurisdiction in the U. S. court; but Burr still assured him that he was able and willing "to make him (Van Dorn) all right," as he had agreed to do.

Reavis testifies Burr told him substantially that Giles was a nominal party; that the case should be prosecuted in the U. S. court, he being a non-resident of the state; that he ought to have conveyed to him in the first place for that purpose, but that he hadn't thought of it, and besides, he did not understand the ropes so well as he did now.

At the time of the pretended conveyance to the plaintiff he executed to Burr and Wheeler the following contract, disclosing the purposes of the deed and providing for the bearing of the expenses of litigation and the division of the plunder; and on the third day of July, 1880, after the commencement of the Bacon suit, and, as Burr testifies, for the purpose of convincing people that the plaintiff's existence as well as his interest in the controversy was not a myth, the following power of attorney executed:

"This instrument, made and entered into this 27th day of April, 1880, between Ezekial Giles, of Clay county, Iowa, party of the first part, and Hiland H. Wheeler and Lionel C. Burr, of Lincoln, Lancaster county, Nebraska, parties of the second part.

"WITNESSETH: That the said parties of the second part by deed

of even date herewith, have conveyed to the said party of the first part certain lands and premises in Lancaster and Otoe counties, Nebraska, which were conveyed to the said second parties by the heirs of one Jacob Dawson, deceased, reference to which said deed is herein had for a more particular description of said land and premises, which said lands and premises have not yet been reduced to possession by said second parties, but are claimed by various persons. Now, it is mutually covenanted that the said parties of the second part shall, and they hereby agree to prosecute all suits against said claimants at the expense of said first party, for the possession of said premises, and to render or procure all necessary legal assistance for such purpose; and the party of the first part, in consideration thereof, and of the conveyance to him aforesaid, hereby agrees to pay all the expenses of such suits as may be necessary as aforesaid; and in the event of final success of any such suits, to pay the said Hiland H Wheeler and the said Lionel C. Burr the value of one-third of said lands and premises, the possession of which is so recovered; and the said party of the first part does also agree to assume and discharge and pay off all indebtedness arising or to arise by reason of a certain contract dated November 10th, 1879, between said parties of the second part and the afore referred to heirs of said Jacob Dawson, and to save harmless said parties of the second part therefrom.

"Reference to said contract for a more particular description of the covenants therein contained is herein had.

"In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

"EZEKIAL GILES, [SEAL]
"L. C. BURR, [SEAL]
"HILAND H. WHEELER. [SEAL]

"Signed, sealed, and delivered in the presence of Charles P. Giles."

"Know all men by these presents, that we, Ezekiel Giles and Lydia Giles, wife of said Ezekiel Giles, both of Spencer, county of Clay, in the state of Iowa, have made, authorized, and appointed, and by these presents do make, authorize, and appoint Lionel C. Burr, of Lincoln, Lancaster county, Nebraska, our attorney for us, and each of us, in our names to enter into and take possession of all such lands, tenements, and real estate whatsoever in the counties of Lancaster and Otoe, Nebraska, whereof either of us now are or hereafter may be by any way or means entitled to or interested in.

"Also for us in our names to commence and prosecute any action at law or in equity to recover possession of said real estate, and to compromise any and all claims held by any and all persons against said real estate, as in his judgment he shall deem meet.

"Also for us and in our names to grant, bargain, sell, lease, mortgage, or otherwise dispose of said premises; and for us and in our names to make, deliver, or receive good and sufficient deeds, leases, conveyances, and all other instruments necessary to express or carry out the powers herein granted to said Lionel C. Burr. And we do hereby empower said Lionel C. Burr as our attorney, and in our names to manage and control said real estate as fully as we or either of us could if personally present, hereby ratifying and confirming whatever our said attorney may do or cause to be done in and about said real estate by authority of these presents.

"In witness whereof we have hereunto set our hands and seals this 3d day of July, 1880.

"EZEKIEL GILES. [SEAL]
"LYDIA GILES. [SEAL]

"Signed, sealed, and delivered in the presence of M. E. Griffin."

"STATE OF IOWA, } ss.
Clay County. }

"On this 3d day of July, 1880, before me, the subscriber, a notary public, personally appeared Ezekial Giles and Lydia, his wife, to me known to be the identical persons described in and who executed the foregoing instrument as grantors, and acknowledged said instrument to be their voluntary act and deed.

"In witness whereof I have hereunto set our hand and seal, at Spencer, in said county, the day and year last above written.

"[Signed] M. E. GRIFFIN,
"*Notary Public.*"

Against this overwhelming mass of evidence, both direct and circumstantial, we have the statement by the plaintiff that the deed was "delivered to him," and that "he got it about June 18th, 1880;" the plainest evasion of the direct issue as to whether it was ever in his actual possession and control or not; the unsupported assertions of the plaintiff.

Burr and Wheeler, the conspirators themselves, when the conspiracy is on trial, say that at the time of the date of the deed none of them intended to bring suit in the U. S. court.

Mrs. Burr, who alone, except her father, knows whether she actually put the deed in the plaintiff's possession, is not called upon as a witness.

We presume no significance will be attached to the bandying of the words "bought," "purchased," and "sold" by the plaintiff and Burr and Wheeler.

The following is a copy of a letter written by Burr to Albert L. Dawson, after the conveyance to Giles, but six months before Dawson learned of such conveyance:

"L. C. BURR, ATTORNEY,
"OFFICE, ROOMS 4 AND 5, STATE BLOCK,
"LINCOLN, Neb., July 23, 1880.

"*Wm. R. Dawson, Esq., Factoryville, Neb.:*

"DEAR FRIEND—Your letter of late date was received, and I want to reply to some things relating to the suit of the Dawson Heirs vs. Bacon et al. I have but very little doubts in my mind but what I shall within four years from to-day win this suit and get you heirs all this property back again, and thereby not only make myself, but all of you heirs independently rich. Of course it is a long and tiresome and expensive suit, but I expect and know that, now while commencing the same. Yet you heirs are all interested with me, and must help me all you can, as the men I must fight are rich and numerous, and will do all they can to delay and hurt my prospects to win the case. Galey is already helping them all he can, by saying that he saw the will about one year after it was put in court; that your father at the time of his death was heavily in debt—to the full extent of his property, viz.: $10,000 etc., and that H. S. Jennings drew the will.

"Now some of the matters may have to be proved by oral testimony, and your mother, yourself, and any person you can remember of, may have to be my witnesses. And, don't you see, if "they" try to explain this will by evidence outside of the will itself, then your mother will certainly be the best witness of all; and when they admit that something must be explained in this way, they admit that the intention of your father was to give this property to your mother to use until she married again, and then his boys and girls should have it. This will has been on record during all this time, and is staring them all in the face, telling them when Editha J. Dawson marries, you (they) cannot have this property—then the Dawson heirs shall have it. Now, can't you and your mother write me and tell me: 1st. Did not your father write this will in

his handwriting? He was a practicing attorney at that time. He may have consulted with Judge Jennings, but certainly he thought and considered himself as good if not a better attorney than Judge Jennings. He may have had him and John H. Helman sign this will as a witness, but that does not say who drew the will. In whose handwriting was the will? Your mother must remember.

"2d. Some person knows where and has the will, I think. I have looked all the papers over that were left with me. Did you ever see it? When was it last? Did you have it up home?

"Now, Will, I expect you are not feeling well, but here is a fortune for us both, all of us, and I tell you I will get the property safe if nothing happens to us, and all of you must help me. Find that will, if it is in your old papers, if it takes a month to do so. Don't give it up; it seems to me that I must have it and prevent Galey from going into the witness stand and swearing you children out of all this property. Has he not injured you enough before to-day—enough?

"There is more in this suit, Will, than your folks have thought.

"Do you think I would go into this if I did not almost know we will win? I have brought the case in U. S. circuit court, so I can go to supreme court of United States, where they have decided a will case just like this one.

"Help me in this; do your part and I will make you all more money than you can make in a life-time on the farm, and at the same time make myself well off.

"Read this letter to your mother; get all the facts. Who drew the will, was mother present? Did she know the contents before it was signed? Where was it last, can't she find it now? And we will give Galey such a dose that will forever quiet him.

"Don't answer any letter that may be written to you relating to this will, and if you think proper send them, or copies to me. It may be they will send some person over there to see you. Be

careful what you say to them, as they will afterwards swear against you, and above all, don't sign any paper with them, but this I need not write, as I know you will not.

"Don't think that I am sure of winning this case; I am not, yet I firmly believe that I will if all of you help me all you can. Write soon; tell me all the particulars; send the deed to Reynolds as soon as convenient, and oblige

"Yours truly,

"L. C. BURR."

The testimony, other than documentary referred to above, may be found upon the following pages of the printed record from which the following paragraphs are literal quotations:

Page 121. Witness PARKER:

My brother asked him (Giles) if he did not own some land in Lincoln. He said no. If he did he did not know it. None that he knew of. My brother asked him if there was not a suit pending there now about some property. He said yes. It was not decided yet. My brother asked him if he was one of the heirs. He said he presumed not in point of law. Said he was not posted though. Did not know much about it, and wanted him to correspond with his attorneys, Burr and Wheeler.

Q. What if anything was said about the consideration?

A. He told him that the parties concerned in this property had looked up his financial —; saw that he was not able to pay $75,000 for that property. He said, "Oh, thunder, is the property worth that much?" He told him that was the consideration in the deed conveying it to him. He said he had given an ample bond and it was none of their business, and told him again to correspond with his attorneys about the lands.

Page 126. Witness FILMORE:

He (Galey) asked him if they (Burr and Wheeler) had conveyed any land to him within the last year, and his answer was: not that he knew of. He said there was some transaction about land in Lincoln City, town lots and lands near Lincoln, but said his agents, Burr and Wheeler, knew all about that matter, and he knew nothing about it, as he said, "as I told you before." Mr. Galey then asked him if he had not paid a man any money or given anything for lands which he bought of Burr and Wheeler, and he paused a moment and then said: "If I didn't my agents did." * * * Then Mr. Galey asked him if he had the deed in his possession that conveyed this land to him. He said, no. He asked him next if he had ever seen the deed or knew what property it conveyed. He said, no, he never had the deed in his possession. Then Mr. Galey asked him whether he knew the property described in the deed was property in Lincoln or land near Lincoln. His answer was that he supposed a considerable portion of it was property in Lincoln City.

Page 132. The witness GALEY:

I first asked him if his name was Ezekial Giles. He said it was. * * * I asked him if he had the deed in his possession, this conveyance made by Burr and Wheeler to him of this property. He said he had not. I asked him if had ever had it in his possession. He said he had not. I asked him if he had ever seen it. He said he had not. I asked him if he had ever seen the property it purported to convey. He said he had not. I asked him if he had ever been in Lincoln. He said he had not. I asked him if he knew the character of the property, whether it was (city) property or lands outside. He said he thought a considerable portion of it was in Lincoln. I asked him if he had ever paid anything for it, and he made me this answer: "Well if I didn't, my bondsmen have."

Page 138. Witness VAN DORN:

He (Burr) said to me, he was compelled to make this transfer in order to get jurisdiction in the supreme court of the United States.

Page 142. Witness ROSS:

I asked Wheeler what he had to assure him against Giles, that is, what surety he had of a settlement of Giles, and he said he had a deed, although I can't say whether it was a deed or not.

Page 144. Same witness:

Q. Where did he (Albert Dawson) reside at the commencement of this action—the one we are trying—commenced last January?

A. He resides in Cass county, Nebraska.

Page 144. The defendant, ALBERT DAWSON:

I had a little conversation with Burr in regard to that matter.

Q. State what that conversation was?

A. He said something about putting it in Giles' name for the purpose of this suit. I don't know what suit he meant.

Page 150. Witness HEATER:

I asked him (Burr) if there would be any trouble in regard to the property. He told me, no. I asked him how he knew so. He said: "We control two-thirds interest in the property."

Page 152. Witness OAKLEY:

Witness Oakley testifies that Burr said, we control two-thirds of this property. My recollection is that he said the heirs owned the other third.

Page 154. Defendant WHEELER:

The defendant Wheeler testifies concerning the conversation between himself and the witness Ross. Ross came and said Albert Dawson wanted to sell his share of the contract for $5,000, and wanted me to buy it. I refused to buy it; told him I could not buy it. He said: "You think I want to get a thousand dollars out of this and go into the grocery business with Dawson. That ain't so. The real reason is that the heirs have become afraid and begin to think that the contract is not secure, and the guarantee is not secure and Albert Dawson wants to sell." He finally asked me: "How do you feel secure for your one-third, as to Giles?" I took up that paper and said: "This is just as good to me as a deed." I told him that was Giles' name, and read him portions of it and showed him the signatures.

Page 157. Same witness:

A. I have always had some interest in these proceedings; have drawn most of the papers, except what Mr. Woolworth has done, and have had the papers in my possession partly; have been reading and looking at them.

Q. You had this for the purpose of drawing some paper?
A. No, sir, I have kept the paper most of the time.

Q. Were you afraid to trust Burr with it?
A. I don't remember now; I happened to have it at that time.

Q. Why has this power of attorney never been filed for record?
A. Because we did not wish to quiet the title of anybody on that case; that is why none of the deeds were filed till Albert Dawson deeded property to Goodwin. Then, to protect ours, we put all the deeds on record.

Q. This putting on record was done to protect you and Burr as against the heirs?

A. No; it was for the purpose of protecting Giles; I have an interest, of course, in this under Giles; that is, if Giles succeeds he is to pay Burr and I the value of one-third of the property; so we have an interest.

Q. You and Burr have one-third interest clear of all expenses of these litigations. Did you or Burr consult Giles with reference to the recording of these deeds?

A. We saw in the morning paper that Albert Dawson had made this conveyance to Goodwin, and we put the deeds on record as quick as we could.

Q. You had them here in your possession at that time?

A. Yes; I don't mean that I had them in my possession; I think Burr had them in his; they were back and forwards between us.

Page 173. Defendant BURR:

Little and Alexander said in that conversation there was no such man as Giles; that there was no such person in fact. I did not know but some man might question my right to bring any suit, or of having anything to do with him, and I wanted that power of attorney; that was one of the objects which got it.

Page 160. Defendant BURR:

Giles refused to take this property for some time; refused to buy it; refused to go into it unless I could point out to him where there was some chance of his making some money, or saving himself for the expenses he was paying out.

Page 187. Witness I. REAVIS:

Q. Did Burr tell you at the same time that Giles was only a nominal party; that the case could be prosecuted in the Federal courts, he being a non-resident of the state?

A. His exact language I don't remember, but he left that impression on my mind; I am taking advantage of the permission of the court to answer in my own way.

Plaintiff moves that be stricken out as not responsive. Overruled.

Q. Didn't you ask Burr on the way from Nebraska City to Factoryville why he and Wheeler took the property in their names, and if their object was to litigate concerning the title in the Federal court, and didn't Burr reply that he ought to have done that in the first place, but that he hadn't thought of it, and besides he didn't understand the ropes as well then as he did now?

A. I asked him that question and he made answer about the way it is stated. There may be some difference in the phraseology from the exact words he used, but he said he didn't understand the thing as well then as he did now.

Plaintiff moves to strike out answer as not responsive. Overruled and exception taken.

Q. Did you ask Burr at that time this question, How will a settlement with the Dawson heirs keep the case in the Federal courts? and didn't Burr reply that a fix up with the heirs would keep them friendly, and no one else knew how Giles held the property; that they knew that he and Giles were the same as one, and that whatever he told Giles to do he would do it and ask no questions; that Giles was acting as Burr said and not as he (Giles) said, and that he (Burr) knew the Dawsons well, and if they were friendly the opposition could get nothing out of them?

A. I couldn't see how a settlement with the heirs would affect this matter.

Objected to by plaintiff. Sustained. Defendants except.

Q. What is the fact about it—in answer to the question which I have propounded?

A. I asked him the question substantially, as it is given to me.

Plaintiff moves to strike out the answer. Sustained. Defendants except.

Last question but one then read over to witness.

A. I wanted to know what effect a settlement would have, and I asked him that question.

Q. Then what did he say?

A. I can't say that his answer was in the exact language used there.

Q. Was it about that?

A. Yes.

LEGAL ARGUMENT.

I.

The conveyance from the Dawsons to Burr & Wheeler creates at most a mere naked trust "to recover possession and become seized."

This trust, which is declared in the instrument reciting the conveyance and the consideration upon which it was made, executed by Burr & Wheeler to the Dawsons, left the whole equitable title and beneficial interest in the Dawsons. Burr & Wheeler were not empowered to sell or to compromise or settle law suits. In case money came into their hands by reason of settlements they were relieved of the cost and expenses to which they were otherwise subject, and the amounts paid out were deducted from the share of the heirs, presumably because the heirs retained the

right to compromise and thus prevent a full recovery. A purchaser from Burr & Wheeler, having notice of the trust, would have been bound by its terms, and unless the heirs ratified the conveyance their equitable title would not have been affected.

Perry on Trusts, paragraphs 217 and 790.

II.

The trust thus conferred upon Burr & Wheeler was purely a personal one, which they could not delegate or transfer to another.

Perry on Trusts, ¶ 254, 287, and 402.
Saunder vs. Webber, 39 Cal., 287.
Storey on Agency, ¶¶ 12 and 13 and notes.

III.

The plaintiff not only knew of the trust, if he knew anything at all about the matter, but he recites it in the instrument of even date with his deed which he executes to Burr & Wheeler, and undertakes, if such a thing can be conceived of, to serve in the double capacity of trustee of the trust for the trustees and as trustee of the trustees' interest in the trust.

And then he divests himself of every vestige of interest or control over the matter by leaving his conveyance, of which he had no personal knowledge, in the possession of Burr & Wheeler, and also by executing to Burr a power of attorney in such unlimited terms that Wheeler himself testified he regarded it as equivalent to a deed. If under such circumstances oral testimony is needed to prove that the conveyance was colorable, we have it in abundance in Burr's admissions; and if authorities be needed to show that his admissions are competent we cite the following:

C., R. I. & P. R. R. v. Collins, 56 Ills., 212.
Martin v. Reeves, 15 Amer. Dec., 154.
Greenwell v. Nash, 7 Reporter, 595.
Rex v. Stone, 6 Tenn., 527.
McDowell v. Rissell, 37 Penn. St., 164–168.

And the rule is not confined to cases where a technical conspiracy forms a portion of the charge, but it includes all combinations formed for the purpose of accomplishing unlawful results or lawful results by unlawful means.

Comm. v. Pierson, 8 Gray, 375–381.
2 Starkey on Evidence, 401–403.
Amer. Fur. Co. v. U. S., 2 Peters, 364–5.
Page v. Parker, 40 N. H., 47–62.
Lee v. Lamprey, 43 N. H., 13–15.

But, again, the familiar rule that the declarations of a vendor made after the conveyance cannot be made to impeach his vendee's title, is based upon the consideration that he has parted with all his interest for a valuable consideration. Here no consideration was paid, and upon plaintiff's own construction of his contract with Burr & Wheeler, the latter retained their interest in one-third of the lands for themselves, one-third for the heirs, and the remaining one-third for the payment of the costs and expenses of litigation, which, it is fairly to be presumed, would entirely consume it, and for their security they retained possession of the deed and were provided with an *alter ego* power of attorney. Under such circumstances the above-mentioned rule has no application.

1 Greenleaf on Evidence, Par. 179, 180, and notes.
Hartman v. Diller, 62 Pa. St., 37.

IV.

Should the court, however, hold the conveyance to the plaintiff not colorable and collusive, for the purpose of making Giles a party to the suit, so as to confer jurisdiction on this court, then we contend the deed is confessedly void for champerty, and leaves the title in the grantors. The agreement between the plaintiff and Burr & Wheeler recites the deed to the plaintiff, and that the "lands and premises" therein described "have not yet been reduced to possession," and it is "mutually covenanted," in consideration of the premises, that Burr & Wheeler shall prosecute the necessary suits "at the expense of said first party" to recover possession for themselves, not Giles. And the plaintiff, "in consideration thereof and of the conveyance to him aforesaid," agrees to pay all the expenses of litigation, and in the event of final success "in any suit" to pay to Burr & Wheeler the value of one-third of whatever of such lands may be recovered, that is to divide the lands with them (*campum partire*), in the ratio of two for himself and one for them, he discharging their obligation to the Dawsons. No transaction could be more accurately described as champertous. At the common law, and by statute 32, Henry 8th, a deed of land to which the grantor was not at the time seized, that is, which was held adversely, was absolutely void, and left the title in the grantor. And this because it was held to be necessarily champertous, and it was said that a man "should not be permitted to sell a quarrel." This doctrine has been expressly adopted in most of the American states, but in others it is held that such a deed is not *ipso facto* champertous, and is *prima facie* valid; but even in those states it is held that if it be shown to be in fact champertous, it is void; and we believe no respectable authority, except Sedgwick v. Stanton, 4 Kernan, N. Y., 289, which rests purely on the statutes of that state, can be produced to the contrary. The deed to Giles, therefore, was ineffectual to convey any interest.

2 Hillard on Real Property, 437, and notes.
3 Washburn on Real Property, 292, and notes.
25 Ia., 488. 43 Ind., 318. 4 Mich., 535–9. 13 O., 175.
96 U. S., 416. 73 Ill., 11. 89 Ill., —.
Gregorson v. Imlay, 4 Blatchford, 503.
62 Ind., 201.

The requirement of the 5th section of the act of 1875, that the controversy shall be "really and substantially" between the parties whose citizenship confers jurisdiction upon the Federal court, may be looked upon as intended to prevent the litigation of champertous suits in that forum, whether the champertous contracts are valid in the states in which they are made or not. But it may be contended that, notwithstanding Burr & Wheeler and the Dawsons retain the whole beneficiary interest in the subject of the controversy, yet it was competent for them to convey the legal title to the plaintiff, who may prosecute the suits necessary for the carrying out of his trust in whatever *forum* he sees fit.

This view, we submit, will not bear examination.

4 Dallas, 330.
Williams vs. Town of Nottawa, 104 U. S., 211.
Coffin vs. Haggin, 13 Reporter (May No., 1882), 547.
Foss vs. First National Bank Denver, 10 Reporter, 717.
Jones vs. League, 18 How., U. S., 77.
Farmington v. Pillsbury, 58 C. R., 807.

At the risk of some repetition, we wish distinctly to urge that upon the face of the papers alone, and aside from all other considerations, the deed to Giles, with the accompanying contract

and power of attorney, did not convey the right to the possession of the land. Giles was a mere passive trustee, if trustee at all, while the active parties, and the parties empowered to bring suits and get possession, were Burr & Wheeler.

1 Perry on Trusts, Par. 18.
2 Perry on Trusts, Par. 790.

Burr & Wheeler could not have conveyed their personal trust to bring suits and get possession, if they had so desired, but they evidently had no such wish, and made no such attempt. Giles, by his power of attorney, makes Burr & Wheeler his active agents, and gives them the right to recover possession, but this right they had before, and expressly undertook in their contract with Giles to execute. Hence, as we have said, Giles is a mere naked, passive trustee, if anything, having no interest in the estate, and having no duty to perform, Burr & Wheeler remaining the real parties in interest.

Blake vs. Collins, 69 Maine, 156.
Knapp vs. Railroad Co., 20 Wall., 123.
Coal Co. vs. Blatchford, 11 Wall., 172, 177, 179.
Jones vs. League, 18 How., U. S., 77.
Maxfield's Lessee vs. Levy, 4 Dallas, 330.

The deed to Giles, contract back, and power of attorney clearly show that the conveyance to Giles was not *bona fide*, and the prosecution of the suit is made not so much for the benefit of Giles as for the benefit of Burr & Wheeler, and the case of Jones et al. vs. League, 18 How., is a case in point. In that case the land was deeded to League, who was to bring the suits, and he was to pay one-third ($\frac{1}{3}$) of the expenses before that time accrued, and all the expenses for the future; and he was likewise em-

powered to make sale and divide proceeds in proportion of one-third for himself and two-thirds to the grantor. This is similar to the contract of Burr & Wheeler with the Dawson heirs, and very similar to the contract with Giles.

The court, on page 31, says this, with reference to prosecutions of this kind: "It very clearly appears from the deed of convey-"ance to the plaintiffs by Palmer, that it was only colorable, as "the suit was to be prosecuted for the benefit of the grantor, and "the one-third of the land to be received by the plaintiff was in "consideration that he should pay one-half of the costs and su-"perintend the prosecution of the suit. The owner of the land "may convey, in order that the title may be tried in the Federal "court, but the conveyance must be made bona fide, so the pros-"ecution of the suit shall not be for the grantor's benefit."

The converse of that proposition, and the reasoning of the case is, that if the prosecution of the suit is for the benefit of the grantor, that it is a fraud upon the court, and the court gets no jurisdiction.

This was under the law prior to the act of 1875. This act has made a much stronger case, and it lays down the law, that where a court finds a controversy is not really and substantially between parties, it has no jurisdiction.

The mere fact that Giles is to give the one-third ($\frac{1}{3}$) value of the land to Burr and Wheeler, and to deed the other one-third, or give its value, to the Dawson heirs, will make no difference in this case.

In the case in 18 Howard, League, the party to whom the conveyance was made, had the power to either sell and give two-thirds of the proceeds, or to deed two-thirds of the land back, but the court makes no note of this, evidently considering that it is

too technical to make any difference in the case, for in either case the prosecution would be for the use of grantors, in either case the grantors would get all there was, except the value of carrying on the quarrel, the lawsuit.

Giles at best only got the purchase of a mere right to recover the land in controversy. He purchased a lawsuit. A transaction of this kind is properly characterized in the case of Graham vs. The Railroad Co., 102 U. S. (12 Otto), commencing on page 155, and ending on page 156:

"It is a rule, not of our law alone but of all countries, that the mere right of purchase shall not give a man right to legal remedies. The contrary doctrine is nowhere tolerated, and is against public policy. All of our cases of maintenance and champerty are founded on the principles that no encouragement should be given to litigation by the introduction of parties to enforce those rights which others are not disposed to enforce. There are many cases where the acts charged may not amount properly to maintenance or champerty, yet of which, upon general principles, and by analogy to such acts, a court of equity will discourage the practice."

SECOND.

Granting, however, for the sake of argument, that the conveyance to Giles was not collusive for the purpose of making a case cognizable by the circuit court, and that it was not colorable merely, but was intended to vest some real interest in the grantee, and the inquiry whether that court had jurisdiction is still pertinent.

Burr and Wheeler and three of the Dawson heirs were all served with process in the state of Nebraska (Record, 12–14), and it is alleged by the plaintiffs' motion to remand and answer to Giles'

cross-bill (Record, 38–64), and proved by testimony, that they were all citizens of that state (Record, 146, 147–158). The petition for removal omits to state the citizenship of any of the parties, except the plaintiffs and the defendant Giles, nor is the citizenship of any others alleged in the cross-bill or other pleadings of Giles or elsewhere, except as above mentioned. If, therefore, the controversy between the plaintiffs and Giles is not separable from that between the plaintiffs and the other defendants to the original bill, the circuit court had no jurisdiction.

Knappen vs. Troy & B. R. R. Co., 20 Wall., 117.
Williams vs. Baukhead, 19 Wall., 563.
Provident Savings Life Assur. Co. vs. Ford, 5 S. C. R., 1104.
Gaylord vs. Kelshaw, 1 Wall., 81.

This action was begun in the state court on the 27th day of January, 1882. On the 20th day of February following, the state court being in vacation, Giles filed his petition for removal, and also on the same day was filed in that court the following document:

IN DISTRICT COURT, LANCASTER COUNTY.
S. W. LITTLE ET AL. VS. EZEKIEL GILES ET AL.

Now come the defendants, L. C. Burr, H. H. Wheeler, Albert L. Dawson, M. S. Dawson, and Melita C. D. Tillman, and for answer to the petition filed herein say:

That at and long before the commencement of this action no one of them claimed or pretended to have, and has not now nor claims or pretends to have, any right, title, or interest of, in, or to the lands and premises in said petition mentioned and described, nor any part or parcel thereof, and these defendants, and each and

every of them, disclaim all right and title of, in, or to the same or any part thereof.

Wherefore these defendants pray to be hence dismissed with their costs.

J. M. WOOLWORTH,
Attorney for Defendants.

That the filing of this paper was nothing more than an additional device for creating a cause cognizable by the circuit court; that it was not in reality intended as a relinquishment by either Burr and Wheeler or any of the Dawson heirs of his or their interest in the subject of the controversy, is proved conclusively by the documents and testimony above recited. That the Dawson heirs did not concur therein, and were ignorant of its very existence is shown by the fact that on the following day they filed an answer and cross-petition in said court, attacking not only the plaintiffs' title but their own conveyance to Burr and Wheeler and the conveyance by the latter to Giles, and asking to have both set aside as a fraud upon them, and for an accounting, and that the title to all the property involved may be quieted in them (for certified copy introduced in evidence, see Record, 278 *et seq.*), and afterwards filed a substantial copy of the same pleading by way of answer to the plaintiffs' bill in the circuit court (Record, 361 *et seq.*) This answer, although in some respects informal, and perhaps insufficient to entitle the defendants to the affirmative relief therein prayed, yet distinctly and sufficiently professed to be an answer to the plaintiffs' bill, and raised distinct issues with all the material averments therein, whether it put the pleadings of any of their co-defendants in issue or required an answer from them or any of them or not. In this answer it is averred that two of the defendants therein, Melita C. Dawson, who is shown to be a citizen of Nebraska, and whose name appears as one of the disclaimants above, and Carlton Dawson, are infants, and it is prayed that "the court appoint some

suitable person their guardian *ad litem* for the purpose of making their defense in this suit." Pursuant to this prayer the circuit court did appoint Mr. James M. Woolworth, who was, and is of counsel for Giles, such guardian *ad litem*, and he, being denied leave to file "another and further cross-bill," filed without leave a separate replication for his wards, putting in issue all the allegations of the plaintiffs' bill (Record, 482–3–4). The next session of the state court after the beginning of the action therein did not begin until the 27th day of February, 1882, and the petition and bond for removal were not presented to that court nor any order of removal made until March 1st, 1882, and in the meantime this answer of the Dawson heirs was, after February 21st, on the files. The clerk of the court, a brother of the litigant L. C. Burr, omitted it from the transcript, but dated his certificate on the 20th, the day the petition for removal was filed.

That a controversy still subsists between the plaintiffs and the Dawson heirs, all, at the beginning of the suit and at the date of the removal, citizens of the state of Nebraska, cannot, we think, in face of the foregoing record, be successfully controverted.

So, we think, there has always been and still is a substantial controversy between the plaintiffs and Burr and Wheeler, all citizens of the state of Nebraska, which is not affected by laying out of view the collusion for the purpose of conferring jurisdiction on the circuit court, and which was not terminated by the filing of the disclaimer.

The charge in the plaintiffs' petition, which is abundantly proved, is that all the defendants were combined in a conspiracy for the doing of certain things injurious to the plaintiffs. Whether or not the objects of such conspiracy were unlawful, as the plaintiffs allege, is not now the subject of inquiry. The things they were charged with doing, and being about to do, by

means of the conspiracy, are the conveyances from the Dawsons to Burr and Wheeler, and from the latter to Giles, the traducing of the plaintiffs' title and disturbance of their possession; the bringing of vexatious suits at law, and generally the doing of such acts as are expressly contemplated, and contracted to be done in the agreement between the Dawsons and Burr and Wheeler, and between the latter and Giles, and by the power of attorney from Giles to Burr. The doing of any and all these acts is sought to be enjoined, and the court is asked to cancel the conveyances already made.

Burr and Wheeler for an answer to all this disclaim any title or interest in the lands, title to which is involved in the suit, and seek by that means to ratify and confirm the very conveyances through themselves to Giles, which it is one of the objects of the action to annul.

So far from admitting the accusations made against them by the petition of the plaintiffs and tendering compliance with such order as the court shall see fit to make in the premises, they seek to evade its jurisdiction and re-assert the claim of their co-conspirator and trustee, Giles, thus effecting the immediate object of the conspiracy by procuring the title to be adjudged in him. But the very thing that the plaintiffs complain of is that through previous devices of these defendants this title is already nominally in him; that Burr and Wheeler have already by their quit-claim deed, of record in the county, disclaimed title in favor of Giles, but that such disclaimer is fraudulent and that the title is in reality in trust for the purposes of the conspiracy.

Is it any the less necessary because of this judicial disclaimer to investigate the conduct of these defendants and their connection with and interest in the alleged unlawful confederation? Can they escape from the controversy and accomplish, by a skill-

ful use of judicial forms, the very end for the defeat of which they have been summoned before the court? We contend that they cannot, that a disclaimer has no appropriate office to perform in such a case; that one charged with conspiracy can only bring the controversy to an end by confession or successful denial.

Slocum vs. Anderson, 6 S. C. Rep., 730.
Fidelity Ins. etc. Co. vs. Huntington, 6 S. C. Rep., 733.

In support of our view as to this feature of the case, it is pertinent to observe that the circuit court found it necessary in the disposition of the cause to pass directly upon all the issues tendered by the original bill, both as to the defendant Burr and the Dawson heirs. The decree dismissing the plaintiffs' bill (Record, 484) is in the following words:

BILL TO QUIET TITLE.

I hold that the title to the premises in dispute is not in the complainants, or any of them; that none of the Dawson's heirs, through whom the defendant Giles derives title, are in any way estopped from asserting title to any or all of the premises in controversy, so far as the complainants are concerned; that nothing has been established by the proof that would estop L. C. Burr, one of the grantors of Giles, or those claiming under him, from asserting title to any and every part of the premises described in the bill. For these reasons the bill must be dismissed at the complainants' costs, and it is so ordered. No disposition will be made of the cross-bill at the present time, but parties may be heard thereon at the adjourned term of the court, if they so desire.

ELMER S. DUNDY,
Judge.

It cannot, we think, be successfully contended that this decree contains any unnecessary matter. These parties stood between the plaintiffs and Giles and until they were gotten out of the way by a determination that they were not estopped to assert their interests in the lands, or that they had no interests, which, whether they were estopped to assert them or not, went to diminish the estate claimed by Giles, no determination could be reached of the controversy between the latter and the plaintiffs.

And again, when the court came to pass the final decree dismissing the original bill and an interlocutory order of reference on the cross-bill of Giles, the eminent counsel for the complainant in the latter, by whom that document was prepared, seems to have thought, and no doubt correctly, that it was essential to an adjudication of the title in his client to dispose of the controversy as to these others, and he therefore inserted therein the following paragraphs (Record, 488):

1. That the plaintiffs in the original bill have not, nor has either of them, any title to the premises mentioned and described in their said bill, nor in any part or parcel thereof.

2. That the children of the said testator, Jacob Dawson, have not, nor has said L. C. Burr, nor any person or party claiming under or through him, nor has either of said parties at any time done, committed, or suffered any act or thing whereby they or any or either of them is or ought to be estopped to assert title to said premises against the said plaintiffs, or any or either of them.

3. That the said Ezekiel Giles is seized in fee of the said premises and all thereof, and is entitled to be quieted of his title therein as against said plaintiffs in said original bill. It is therefore ordered, adjudged, and decreed as follows:

1. That the original bill be, and the same is hereby dismissed out of this court with costs to be taxed.

Not until it had been determined that the plaintiffs were not entitled to the relief they prayed against the Dawsons and Burr and Wheeler, could it be determined that Giles was entitled to the relief he prayed against the plaintiffs.

II.

Suppose it to be conceded that the disclaimer was operative to release and convey to Giles the interest in the lands, which was expressly reserved to Burr and Wheeler and the Dawsons by the agreements executed contemporaneously with the deed to him, and they are still, it seems to us, as far as ever from success in their attempt to make a case cognizable by the circuit court. From the 27th day of January, when the suit was begun, and process therein was served, until the 20th of February, when this disclaimer was filed, nothing had occurred to divest Burr and Wheeler of their interest. Probably no one will contend that from the beginning of the suit down to the latter date they were not indispensable parties. This court has repeatedly held that the diversity of citizenship required by the statute must exist, both at the beginning of the suit and at the date of removal.

Insurance Co. vs. Pechner, 95 U. S., 183.
Gibson vs. Bruce, 108 U. S., 561.
Smith Executor vs. Akers, 6 S. C. Rep., 669.

But separability of controversy and diversity of citizenship are indissolubly united by the statute. If after suit brought, one necessary party can release or convey his interest or procure another or others to do so, and by that means confer jurisdiction upon the circuit court, then the statutory requirement of diversity of citizenship will lose its practical importance. This device will be found as available and less inconvenient for the purposes of jurisdiction than would change of citizenship. Jurisdiction of the

state court, no less than that of the circuit court, depends, it seems to us, "on the state of things at the bringing of the action, and subsequent events cannot oust it."

Mollan vs. Torrance, 9 Wheat, 537.
Clarke vs. Matthewson, 12 Peters, 164.

Possibly, however, defendant's counsel is of opinion that the disclaimer operated to release and convey not to Giles, but to the plaintiffs. In that case the decree should of course be reversed or so modified as to vest two-thirds of the property in the plaintiffs. This much is apparently beyond question, namely: That if the disclaimer effected the removal of the defendants from the controversy at all, it did so by operating as a conveyance of their interest to somebody—it can scarcely be regarded as in abeyance. We conclude, therefore, that not only the Dawson heirs who continued active parties, but Burr and Wheeler, who remained passively such, were not only indispensable parties, but that the controversy as to them was and is inseparable from that with Giles.

The language of this court in Shields vs. Barrow, 17 How., 130, applies to these parties, and specially to the Dawson heirs, with full force as "persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience." For if only a part of these persons, or none of them, are before the court the decree must either destroy the rights of those who are absent or leave their claims in full force as affects them.

Certainly they are "persons having an interest in the controversy, and who ought to be made parties in order that the court may act upon the rule which requires it to decide on and finally

determine the entire controversy and do complete justice by adjusting all the rights involved in it."

Williams vs. Bankhead, 19 Wall., 563.
Sloane vs. Anderson, 6 S. C. Rep., 730.
Mallon vs. Hinde, 12 Wheat., 193.
Knappen vs. Troy & B. R. R. Co., 2 Wall., 117.
Gaylard vs. Kelshaw, 1 Wall., 81.
Ayers vs. Chicago, 101 U. S., 184.
Provident S. L. Assur. Co. vs. Ford, 5 S. C. R., 1104.
Brigham vs. Luddington, 12 Blatch., 237.
Hoxie vs. Carr, 1 Sumner, 173.

THIRD.

Were the issues relative to the estoppel properly decided? Should not the decree have at least ascertained the interest of the defendant Burr in the subject of the controversy, adjudged him and his co-defendants estopped from asserting the same against the plaintiffs, and have relieved his co-defendants, and especially the defendant Giles, from the obligation of conveying to him the interest so estopped, or accounting to him for its proceeds or value? The answer of Giles to the original bill admits that the conveyance from Burr and Wheeler to him was "without covenants of warranty or of title or otherwise," so that as to at least an undivided half of the property, he stands in no better plight as respects matters of estoppel than does Burr.

May vs. Le Claire, 11 Wall., 217.

Such parts of the evidence as appear to us most pertinent to this issue can be found on the following pages of the printed record, the following paragraphs being quotations therefrom:

Burr testified (page 158) that for eight or nine years he had been a resident of Lincoln, Nebraska, and a practicing lawyer in the courts of that state.

HAWLEY (page 224):

I asked Mr. Burr in reference to the title to the piece of land in question, and he considered it good. He said he had a short time previous written—I think it was to Lombard, Jun'r—that he had written to him in reference to that, and he had stated to them he would perfect the title of any defect for $125.

Same witness (page 225):

Q. Did this conversation with Mr. Burr influence you in any manner in purchasing the property?

A. Yes, it did.

Q. How did it influence you?

A. Well, I objected to buying this property till I had this contract with Mr. Burr, and I talked with him about it.

Same witness (page 226):

A. In the first place I asked a question of you (Burr) in reference to the title to the land. You (Burr) said you regarded it as good, and that you had written to Mr.—what is his name—that you would perfect the title for so much. Furthermore, you observed, in the first place, that Mrs. Dawson was interested in perfecting that title. You was her attorney, and that would be her consideration. Mr. Webster objected at first, she was nothing to it, but you said you was her attorney.

Same witness (page 229):

L. C. Burr told me he would give a good title for $125, and then he made a contract.

Witness BEACH (page 230):

He (Burr) stood up in the buggy or carriage where he was and said the property was all clear, the title would be good, clear of taxes and everything, and there would be a warranty deed given, and a certain portion paid down and a certain portion run three years; that is the terms; I bought some and others bought that way; the title would be good.

Defendant BURR (page 233):

Q. About what time, as near as you can remember, were you employed by Mrs. Dawson?

A. I would say to the best of my recollection, in fall of 1874; winter or spring of 1875 was my first dealing with Mrs. Editha J. Dawson.

Q. What did you do?

A. I negotiated the sale of her property and looked after her business; whenever she wanted me to sue a party I brought action and sued them; and whenever she wanted me to sell a piece of property for her I done that.

Same witness (page 234):

Q. Did you negotiate any at private sale?

A. Yes, I think I negotiated a dozen or two dozen of these lots—not to exceed two dozen, I do not think, because there was not so many in Dawson's addition to South Lincoln. * * *

Q. But William and Albert had supervision of this business with you, or consulted with you; you say that?

A. I never; well, Wm. R. Dawson was in my office a great deal. He consulted me about it, and he would go and talk with his mother.

Q. Did you discuss with him the propriety of making these sales or did he direct it?

A. It is hard for me to say whether he directed it or not.

Q. He knew of it?

A. Oh, yes; he participated all which is possible for an owner to participate in a sale.

Q. Both he and Albert?

A. I am satisfied I advised the sale at auction; told them it was the only thing they could do.

Q. The children were all aware of it—agreed and consented to it?

A. I do not know anything about that.

Q. As far as it was possible?

A. I do not know anything about that; some of them were young children.

Q. But these boys—they did?

A. I would say Wm. R. knew about it, and he was there at the sale.

Witness PICKERING (page 264):

She spoke several times of her property; that she wanted to get that sold; that she had been advised to sell her property before marrying.

Q. Did she say who advised her?

A. She spoke of her lawyer; I did not know who her lawyer was at that time; I afterwards learned that Mr. Burr was her lawyer.

(Also the testimony of same witness, on pages 267–8–9.)

CHIPMAN, witness. Page 286:

I asked him if the title was all right and good, and he told me it was, and I left the money with him.

Same witness (page 287):

I asked him about it and he said he did not know; it was not decided yet exactly; it was going into court again. I told him I would like to clear the thing up. I told him he told me the title was all right. He said he undoubtedly did, if he told me anything; he could not remember about that.

Witness MCMANIGAL (page 299):

I asked Mr. Burr, as I most always ask any person of whom I may buy property, if the title was all right. My recollection is that he said that it was, with the exception, perhaps, of some unpaid taxes; I think I bought some of the lots subject to some back taxes; that's my recollection.

Witness MCLAUGHLIN (page 301):

Did you have any conversation at the time of that purchase with reference to the title?

A. I believe the only conversation with Mr. Burr—Mr. Burr made a statement on the ground the day I bought, before the auction commenced, that the title was all right.

Page 304:

The following advertisement, published in the local daily paper from November, 1874, to December, 1875:

Advertisement in *State Journal:*

DAWSON PROPERTY FOR SALE.

A rare opportunity for investment. A large number of lots for sale in various parts of Lincoln, at one-half their market

value. Buy immediately if you want to make some money. Inquire of

LIONEL C. BURR,

Nov9-eodtf Office in Academy of Music, Lincoln, Neb.

Witness A. D. BURR (page 305):

Q. In the spring of 1875, as the agent of Mr. A. C. Huestis, did you negotiate the purchase of a portion of the property?

A. It was along in February.

Q. The early part of 1875?

A. Yes.

Q. From whom did you purchase it?

A. Mrs. Dawson.

Q. With whom did you negotiate this purchase?

A. Well, I think with L. C. and one of the Dawsons.

Q. One of the Dawson boys?

A. I think one of the Dawson boys was up in the office.

Q. Do you know which one?

A. I do not know, but I am pretty sure one of them was there.

Q. You did not know them at that time?

A. Well, now—well, I knew two or three of them; two, anyway; but I do not know which was there. There was Albert Dawson, and I have forgotten the other ones' names.

Q. What portion of this property did you purchase?

A. Through your kindness, I will refresh my memory. [Looking at a paper.] It was all of block 37 (12 lots); lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12; lots 5, 6, 7, and 8, being the west half

of block 36; lots 1, 2, 3, and 4, being the east half of block 35. I think that was all the lots in the property.

Q. All you remember?
A. Yes.

Pages 322–323:

A. I went to Mr. Burr and made him an offer on all the lots not sold yet, but it was not accepted. I offered about three times the amount they brought. He thought I had better buy them. I thought he meant good by me—I had better buy them and I would get them cheaper. I stayed there awhile, and Mr. Burr spoke to the men and said: "You had better buy these lots; the lots are bound to be sold." These words I recollect—"The lots are bound to be sold; there is heavy taxes against them, and Mrs. Dawson is bound to sell them." That is just about what he said. In regard to the title, he said that Mrs. Dawson's title is good.

Page 333:

Q. Did you hear Mr. Burr make any statements there (at the auction) with respect to the title?

A. I heard a statement made, and I asked about it before it was bought. I bought lot 11, in block 47. I understood that statement that much, that everything would be in perfectly good order; they were going to sell it, and it would be bid off; that they had a perfect, good title to the property, so I understood, or I would not buy it, and so did they all.

Pages 306–307. Letters to the plaintiff, Huestis.

Page 317. Burr's testimony:

Burr testifies he first heard the Dawson will question, the title to the property from the will questioned, September 12th, 1878.

Page 290. Contract with defendant Burr and J. R. Webster, of one part, and plaintiff Hawley, of second part, beginning with the recitals:

That whereas the said party of the second part is desirous of purchasing the W. half of S.E. 4th, 19, 10, 7 E., Lancaster county, Nebraska; and whereas the title, both legal and equitable, to said tract of land was, prior to the first day of April, 1877, in Edith J. Dawson, of said county, and in or about said date the said Edith J. Dawson conveyed said tract of land by deed of that date and of general warranty deed and running to the Union Mutual Life Insurance Company of Maine.

Page 291. Agreement between Dawson and Lombard, signed by defendant Burr as agent.

Page 292. Letter from Burr to Lombard.

Page 540:

Master reports a two-story building on the lot of plaintiff Little, in block 54, worth over $4,000; was erected in 1878.

Van Dorn testifies (page 216):

A. Mr. Burr told me. I asked Mr. Burr about the title; he said it was perfectly good, for Mr. Dawson in his life-time had made a will, and had willed all his property, both real and personal, to Mrs. Dawson.

Q. Did he say that after or before the purchase?

A. I think when we first commenced talking about the trade; I know before we bought the property.

Q. Who finally completed and closed up the purchase on behalf of your son and Mr. Lashus?

A. I did; yes, sir.

Q. Were you influenced in any way by this statement of Mr. Burr in making the purchase?

Burr objected, as incompetent, immaterial, irrelevant, and leading.

A. Of course I was. If Mr. Burr had told me it was doubtful, or anything of the kind, I should have backed out quicker than a snap.

LEGAL ARGUMENT.

The case made then, is briefly this: Burr, from some time in 1874, until 1879, when Mrs. Dawson had disposed of all the estate of her late husband by deeds purporting to convey the fee, had been her managing and confidential agent, attorney in fact, and legal adviser; for more than a year during the time he had kept an advertisement standing over his own name in the local daily paper, advertising the estate for sale and urging the public to avail themselves of the opportunity to "make some money." He had repeatedly during the time, by public announcement, at auction sales and by private advice to individuals, assured purchasers and intending purchasers, and all persons who might be induced to deal in the titles assumed to be conveyed by Mrs. Dawson, that such titles were "perfectly good." These assurances and transactions were participated in not only by Mrs. Dawson, but by the defendant Albert Dawson, and by Wm. R. Dawson, father of the defendant Carlton Dawson, who had both attained their majority, as well as by the other Dawsons, who were yet minors.

Burr had, in the capacity of agent, sold a large amount of the property, assuring purchasers that the title was good and in the case of the plaintiff Huestis and the Union Mutual Life Insurance Company, through which the plaintiff Hawley acquired his title, making such assurances in writing, and in the latter case enter-

ing into a contract in writing as a member of a firm of attorneys in which he expressly stipulates the title "both legal and equitable" to be in Mrs. Dawson, and undertakes to clear off an incumbrance for an agreed compensation. During this time two large buildings were erected on the lots in block 54, one at the cost of about six thousand dollars, and one at about the cost of eight thousand dollars. These buildings, with others on the same plat, underwent extensive and costly repairs, dwellings and houses were erected on other tracts in the city, and the lands adjoining were cultivated and planted to trees and nurseries. Meantime Burr admits that he learned in September, 1878, that the will of Jacob Dawson is capable of such construction as not to vest the power to convey the fee in his widow, and as early as June, 1875 (Pickering's testimony, page 260 *et seq.*), negotiations were opened by Mrs. Dawson for the marriage which was to be and was celebrated four years and a half later, when arrangements were perfected for turning the same to a profitable account. That this marriage was advised by Burr, was devised for the express purpose of consummating a scheme to defraud those who had dealt upon the faith of the titles conveyed by Mrs Dawson, which owed their reputation principally to the above recited assurances of Burr himself; that it was postponed from time to time in order to afford opportunity for closing out the last of the estate and the perfecting of the contracts and conveyances between Burr and Wheeler and the heirs, almost contemporaneous therewith, the record scarcely leaves room for a reasonable doubt.

We apprehend that under these circumstances it will not avail Mr. Burr to say that he was ignorant of the true state of the title. He was dealing with the title, and purchasers, and the public were relying upon his representations concerning it. He was bound to know. Nor is it a sufficient answer to say that the

means of information were equally open to him and to the public and persons who dealt with him. He was himself a practicing attorney of many years standing at the bar, the common and usual source to which the lay public apply for information with respect to such matters. A layman who read the will must still apply to a lawyer for its interpretation. Why not as well apply to Burr as to another? And when assured by him "that the title was good," why distrust the soundness or sincerity of his opinion? The doctrine which we conceive to be applicable to this case with respect both to Burr and Albert L. and William R. Dawson is thus accurately and forcibly expressed by Perly, C. J., in Horn vs. Cole, 51 N. H., 287:

"In equity the doctrine has been liberally applied to suppress fraud and enforce honesty and fair dealing without any attempt to confine the doctrine within the limits of a strict definition. For instance, the doctrine has not in equity been limited to cases where there was an actual intention to deceive. The cases are numerous where the party, who was estopped by his declarations or his conduct to set up his legal title, was ignorant of it at the time, and of course could have had no actual intention to deceive by concealing his title, yet if the circumstances were such that he ought to have informed himself, it has been held to be contrary to equity and good conscience to set up his title, though he was in fact ignorant of it when he made the representations. Nor is it necessary in equity that the intention should be to deceive any particular individual or individuals if the representations are such, and made in such circumstances, that all persons interested in the subject-matter have the right to rely on them as true, their truth cannot be denied by the party that has made them against any one who has trusted to them and acted on them." "If they were intended to deceive generally, or were of such a character and made in such circumstances that it must

have been understood they were likely to deceive, and any person using due diligence was in fact deceived by them, it is enough."

Gregg v. Wells, 10 A. and E., 90.
Adams Co. v. Brown, 16 Ohio S., 78.
Dezell v. Odell, 3 Hill, 221.

So Mr. Pomeroy says in his work on Equity Jurisprudence, Vol. 2, page 273, § 809: "The rule has sometimes been stated as though it were universal, that an actual knowledge of the truth is indispensable. It is, however, subject to so many restrictions and limitations as to lose its character of universality. It applies in its full force only in cases where the conduct creating the estoppel consists of silence or acquiescence.

It does not apply where the party, although ignorant or mistaken as to the real facts, was in such a position that he ought to have known them, so that knowledge will be imputed to him. In such case ignorance or mistake will not prevent an estoppel. Nor does the rule apply to a party who has not simply acquiesced, but who has actively interfered by acts or words, and whose affirmative conduct has thus misled another."

The rule as thus expressed by a careful and judicious writer is clearly a correct exposition of the law deducible from the authorities, and is well substantiated by those cited in his voluminous notes.

Dickerson vs. Calgrove, 100 U. S., 578.
Baker vs. Humphrey, 101 U. S., 494.

To work the estoppel it is not necessary the declaration should be made to the party who acts on it, nor in his presence, nor that

the declaration should be intended to come to the knowledge of any particular person.

Mitchell vs. Reed, 9 Cal., 204.
Quierk vs. Thomas, 6 Mich., 76.

FOURTH.

I.

On the 23d day of February, 1883, being of the January term of the court for that year, the court made and enrolled a decree dismissing the original bill (Record, 484), and at the next or May term, on June 14th, 1883, passed another decree upon the issues formed by the original bill and the answer of Giles thereto, again dismissing the former with costs to be taxed (Record, 487), and at the same term, on the 17th day of October, 1883 (Record, 492), an application for leave to appeal from this decree was formally granted. The cause then proceeded upon the cross-bill of Giles and the issues thereon raised alone. A reference was had, proofs taken, and a report made on divers of such issues, and not until September 5th, 1884, one of the days of the May term of the court for that year, was a final decree rendered thereon. This decree disposes of all the issues on the cross-bill except those relative to jurisdiction and the alleged colorable conveyances complained of by the defendants therein, but does not refer in any way to the original bill or any of the issues thereon. The cross-bill itself refers to the original bill only in passing as being an attack upon the title asserted by Giles, and is in no other respect different from an original ejectment bill brought by Giles against the plaintiff. It charges that the complainant therein has the legal title in fee to the demanded premises, sets forth the chain of title by which he claims it was obtained, avers that the respondents therein are in possession, asks to have a

receiver appointed to collect the rents and profits pending the litigation, and for a judgment of ouster and writ of possession. The decree upon the cross-bill simply directs the defendants therein *seriatim* to surrender and deliver up the possession of the premises severally held by them to the complainant Giles upon demand and the payment to them of certain sums by way of compensation for improvements, and in case of refusal authorizes the marshal to forcibly eject them as upon a writ of assistance and provides for a payment of the sums in the receiver's hands to Giles.

It is clear that an original bill of this kind could not be entertained, and it would be the duty of the court to reject it *sua sponte*.

Lewis vs. Cocks, 23 Wall., 466.
Galt vs. Galloway, 4 Pet., 332.
Funell vs. Gregg, 5 S. C. Rep., 631.

The Nebraska statute has not changed the rule in the state courts in this respect.

Smith vs. Dean, 15 Neb., 482.

Neither, we think, can this result be attained by means of a cross-bill. It is the office of a cross-bill only to enable the complainant therein to obtain such affirmative relief as may be gained upon matters appertaining to the subject of the original bill. As, for instance, in the case at bar, if the facts had not been fully pleaded in the original bill, to supply those omitted or obtain a discovery of them, if necessary, so as to enable the court to put the true construction upon the will and to ascertain and adjudge what title or interest, if any, was conveyed thereby, anything beyond that is in the nature of an original bill and is not per-

missible, and where, as in this case, it is not sought to present any new matter appertaining to the averments of the original bill, a cross-bill has no legitimate office to perform.

Heath vs. Erie Railway Co., 9 Blatchford, 316.

"A cross-bill, which seeks no discovery and makes no defense not equally available by way of answer to the original bill will be dismissed, with costs."

Weed vs. Small, 3 Sanford Chancery, 273.

"A cross-bill is a mere auxiliary suit and a dependency on the original," and is dismissed by a dismissal of the original.

Cross vs. Del Valle, 1 Wall., 1.

"Wherever the cross-bill seeks relief it is indispensable that it should be equitable relief, otherwise it will be demurrable, for to this extent it is not a pure cross-bill, but is in the nature of an original bill, seeking the further aid of the court beyond the purposes of defense to the original bill, and under such circumstances the relief should be such as in point of jurisdiction the court is competent to administer."

Story Equity Pleading, 629.
Daniels' Chancery Practice, 5th Ed., vol. 2, page 1550, note 3.

The cross-bill in this case seeks no discovery, charges the defendants therein with no fraud, accuses them with having no deed or instrument which purports to be a cloud or an incumbrance upon the complainant's title, or which the court can be called upon to cancel or to compel the defendants to release, surrender, or convey. Conceding Giles' construction of the will to be the true one, and the cross-bill sets forth a plain, con-

nected, and unassailable legal title in him, which is in all respects distinct from and unconnected with the title asserted by the plaintiffs in the original bill, and for the maintenance of which the courts of law afford a plain, adequate, and complete remedy.

II.

The statute under the protection of which the buildings and improvements were made, and the taxes paid by the occupants of the lands in controversy, is found on page 500 of the Compiled Statutes of Nebraska for 1873, and such part of it as is pertinent to the present inquiry is in the following language:

"Section 1. That in all cases where any occupying claimant, being in quiet possession of any lands or tenements, for which such person can show a plain and connected title, in law or equity, derived from the records of some public office; or being in quiet possession of and holding the same by deed, devise, descent, contract, bond, or agreement from and under any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded; or being in quiet possession of and holding the same under sale on execution against any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded; or being in possession of and holding any land under any sale for taxes, authorized by the laws of this state or the laws of the territory of Nebraska; or any person in quiet possession of any land, claiming title thereto, and holding the same in good faith, under a deed or sale made by executors, administrators, or guardians, or by any other person or persons in pursuance of any order of court or decree in chancery where lands are or have been directed to be sold, and the purchaser or purchasers thereof have obtained title thereto and possession of the same without any fraud or collusion on his, her, or their part, shall not be evicted or turned

out of possession by any person or persons who shall set up and prove an adverse and better title to said lands, until said occupying claimant, his, her, or their heirs, shall be fully paid the value of all lasting and valuable improvements made on said land by such occupying claimant, or by the person or persons under whom he, she, or they may hold the same previous to receiving actual notice, by the commencement of suit on such adverse claim, by which such eviction may be effected, unless such occupying claimant shall refuse to pay the person so setting up and proving an adverse and better title the value of the lands without the improvements made thereon as aforesaid, upon the demand of the successful claimant or his heirs as hereinafter provided."

"Sec. 2. That the title by which the successful claimant succeeds against the occupying claimant, in all cases of land sold for taxes by virtue of any of the laws of this state or the laws of the territory of Nebraska, shall be considered an adverse and better title under the provisions of the first section, whether it be the title under which the taxes were due, and for which said land was sold, or any other claim or title whatever; and the occupying claimant holding possession of lands sold for taxes as aforesaid, having the deed of a county treasurer for such sale for taxes, or a certificate of sale of said land from a collector of taxes or county treasurer, or shall claim under the person or persons who held such deed or certificate, shall be considered as having sufficient title to said land to demand the value of improvements under the provisions of the first section of this act."

"Sec. 3. That the court rendering judgment in any case provided for by this act, against the occupying claimant, shall, at the request of either party, cause a journal entry thereof to be made, and thereupon a jury shall be impaneled by the court in the usual manner provided by law in civil cases."

"Sec. 4. That the jury impaneled as above shall immediately proceed to view the premises in question, and then and there, on

oath or affirmation, assess the value of all lasting and valuable improvements made as aforesaid on the lands in question, previous to the party receiving actual notice as aforesaid of such adverse claim, and shall also assess the damages, if any, which the said lands may have sustained by waste, together with the net annual value of the rents and profits which the occupying claimant may have received from the same, after having received notice of the plaintiff's title by the service of process, and deduct the amount thereof from the estimated value of such lasting and valuable improvements, and said jury shall also assess the value of the land in question at the time of rendering judgment as aforesaid, without the improvements made thereon, or damages sustained by waste as aforesaid."

This statute is not one providing a method of procedure merely, but is one which guarantees a substantial right, viz.: To have the value of betterments appraised by a jury. Moreover, it is a legal right available to any party claiming the right of possession in good faith, however ill-founded in fact his claim may be.

The Lessee of Davis vs. Powell, 13 Ohio, 308.
Harrison vs. Costner, 11 O. S., 339.
Litchfield vs. Johnson, 4 Dillon, 551.
Stebbins vs. Guthrie, 4 Kan., 354.

It is analogous to the right to redeem from decrees foreclosing mortgages.

Brine vs. Hartford Insurance Co., 96 U. S., 627.

This statute also involves a method, and if the occupying claimants choose to adopt it, the sole method of ascertaining the

amount of their liability for mesne profits. If they do not so choose, then an ordinary action at law affords a plain, adequate, and complete remedy.

The decree dismissing the original bill, therefore, disposed of the whole cause, and whatever conclusion may be arrived at as to the jurisdiction of the court to make it all that was thereafter done was without jurisdiction and should be set aside.

FIFTH.

Errors of the circuit court in its proceedings relative to the buildings, improvements, rents, etc.

The circuit court in the trial departed from equitable principles and denied the defendants to the cross-bill the benefits of the statute of Nebraska relating to occupying claimants of lands.

First. It directly denied the formal application of these appellants for a reference comprehending only substantially what they were entitled to both under the statute of Nebraska relating to occupying claimants and according to the plainest principles of equity.

On pages 485 and 486 of the transcript will be found the following request of these appellants:

Motion for an order of reference.

CIRCUIT AND DISTRICT OF NEBRASKA. IN EQUITY.

EZEKIEL GILES
vs.
S. W. LITTLE *et al.* } 202, F.

The defendants to the cross-bill of Ezekiel Giles move the court for a reference of said cross-bill and answer to a special master

to be appointed for that purpose to severally report on the following matters:

1. What portions of the lands and tenements in the cross-bill described were at the time of the filing of said cross-bill in the quiet and peaceful possession of said defendants, or any of them claiming title thereto, for which such defendants can show a plain and connected title, either in law or equity, derived from the records of some public office, or from the United States, or this state, or derived from any such person by devise, descent, deed, or contract, and whether any of said defendants, or any person through whom they claim, have made any lasting or valuable improvements on such real estate, and if they have, to find and report the character, description, and value thereof, and when the same were made upon said real estate, and whether they have paid any taxes or assessments upon such real estate, and, if so, the amount and times of payment, and what the same would amount to on said several tracts, computing interest thereon at the rate of interest provided by the laws of the state of Nebraska for delinquent taxes, and what sums the said defendants, or any of them, have paid to redeem any of said lands from tax sales.

2. Whether at the times of making the said improvements or paying the said taxes the said several defendants and the persons under whom they claim claimed title thereto in good faith and without any collusion or fraud and in the honest belief that they owned said premises in fee.

3. What was the value of the several tracts of land without the improvements on the 15th day of November, 1879?

4. What was the value of the improvements on the several tracts on the 15th day of November, 1879?

5. What would have been a fair land rent for the several tracts of land without the improvements for each year since Nov. 15, 1879?

6. What was a fair rental value for the several premises occupied with the improvements since Nov. 15, 1879, each year? What amount of taxes did any of the defendants not in possession pay, or their grantors? At what date did the several defendants receive notice of the plaintiffs' title by service of process on them, and during what periods did they occupy the premises?

7. What was the value of the valuable and lasting improvements on the several tracts of land at the time the several defendants received notice of the plaintiffs' title by service of process on them?

8. What has been the value and the net annual value of the rents and profits of the several tracts since the occupant received notice of the plaintiffs' title by service of process on them which the defendants have received?

9. What is now the value of the several tracts of land without the improvements thereon, and what including the improvements? What is the present fair rental value of the several tracts of land with the improvements thereon, and what would be a fair annual land rent for the several tracts of land without the improvements thereon?

10. What is the balance or difference between the value of all lasting and valuable improvements which any of said defendants, or any person under whom they claim, have placed upon any of the said tracts of land prior to their receiving notice of the plaintiffs' title or claim by service of process on them, and the net annual value of the rents and profits which they may have received from said premises after they had received notice of the plaintiffs' title by service of process on them?

11. If such balance or difference is in favor of Giles on any of said tracts, what then is the difference or balance between such difference and the aggregate amount of all such taxes and interest, computed as aforesaid, paid by any such defendants on said tract subsequent to the 15th day of November, 1879, or paid to redeem such tract from any tax sale for taxes before such occupant had received actual notice by the commencement of suit on such title claimed by said Giles?

That the testimony taken in the cause may be referred to said master and the parties may adduce such further evidence on said matters so referred as they may desire.

N. S. HARWOOD AND W. J. LAMB,
Sol's for Def'ts.

The foregoing the court refused and passed its decree (page 488 and 489 of the transcript) and limited the reference to the following points:

4. What are the character and value of the improvements made upon the premises in question in the said cross-bill, and the time each improvement was made, with a particular description thereof from the time of the death of the said testator, Jacob Dawson, to the filing of the cross-bill.

5. What were the rental value and also the rents actually received by each defendant in said cross-bill, and by the receiver, of each and every several part and parcel of the improvements made by him or her since the remarriage of the said Edith J. to this day, stating the same with the respect of the property as if the same were unimproved, as he shall find the same.

6. What are the rights of the claimants and Giles under the occupying claimants' law, if any, and also under the rules of equity.

Statutes protecting occupying claimants of lands not unlike our present law have been in force in Nebraska since 1873, and it was the duty of the circuit court, in equity, having jurisdiction of the subject matter and passing a decree divesting these appellants of the title to so mold its practice as to carry into effect fully the laws of Nebraska and accord to them every right they had either under the statute or in equity.

Blank vs. Smith, 13 Peters, 203.
Bank of Hamilton vs. Dudley's Lessees, 2 Peters, 526.
King's Heirs vs. Thompson, 9 Peters, 221.

The statute of Nebraska relating to occupying claimants of lands then in force is hereinbefore copied.

Second. The occupants, though finally adjudged to have held merely the estate of Editha J. Dawson, when the improvements were made, are, under the statute, entitled to pay for them if they made them under the honest belief that they had the fee title.

Plimpton vs. Plimpton, 12 Cush., 458.
Wales vs. Coffin, 100 Mass., 177.
Seignurest vs. Fahey, 27 Minn., 60.
Sedgwick, Titles to Lands, Sec. 692–693, 694.

Third. The complainant in the cross-bill having taken a decree for this property in a court of equity must submit to do equity to the defendants by paying them for the improvements to the extent they have enhanced the value of the property recovered.

Bright vs. Boyd, 1 Story, 478; 2 Story, 605.
Cooley Con. Lim., latest ed., 479.
Sedgwick on Titles, 691–693, etc.
Hatcher vs. Briggs, 6 Oregon, 31. (Reviews the cases).
McKelway vs. Amour, 10 N. J. Eq., 115.
Union Hall Association, 39 Md., 281.
Bell vs. Barnett, 2 J. J. Marsh, 516.
Vale vs. Flemung, 29 Mo., 152, cited in 8 and 9 Mo. Appeals.
Brett vs. Yeaton, 101 Ill., 272.
2 Sugden Vend. & Pur., p. 514, bottom page 748.

In view, then, of the law as enacted in said statute, and as laid down in the above cases, what one of the eleven foregoing requests made by these appellants to the circuit court for a reference as to improvements and taxes could that court equitably and properly have refused? We insist, not one of them, but that in doing so it introduced errors into this branch of the case which should be eliminated.

Fourth. Before the master the appellees, besides the other usual objections, insisted that the appellants' testimony "is contrary to the true meaning of the order of reference;" and finally they prevailed upon him to wholly reject and not consider the testimony of twelve of the chief witnesses of these appellants as to the values of the improvement, and he reports (page 540 of record):

"In finding the value of said buildings I have based my find-
"ings upon the testimony of the witnesses, Roberts, Hiltner, and

" Cook, as to the value thereof as the best evidence thereof. The " testimony of the other witnesses as to value I do not consider."

This error, as well as others of the master which we will now proceed to discuss, the circuit court, overruling the exceptions of these appellants, adopted and carried into its final decree.

Fifth. The third exception to W. R. Kelley's reports. We discuss the third exception of the appellants S. W. Little, Martha Alexander, and A. P. S. Stewart to the master's report together, as they are alike. The exception is as follows:

Third exception. For that the said master hath in and by his said report certified that in finding the values of said buildings—that is to say, the lasting and valuable improvements upon the several premises in question in this case—he hath based his findings upon the testimony of the witnesses Roberts, Hiltner, and Cook alone as to the values thereof, as the best evidence thereof, and that the testimony of the other witnesses as to the values of the said buildings he did not consider; and it doth appear by the abstract and report of the testimony brought in and produced before the said master, and now returned here with said report, that this defendant produced the following named witnesses, who gave competent and material testimony as to the values of said buildings on the said premises.

The testimony wholly rejected and not considered by the master was that of the following-named witnesses—all men of high character, builders or dealers in real estate, or real estate agents, and all residents for many years in the city. Their names, their valuations, and their highest and lowest valuations of the buildings were as follows:

S. W. LITTLE LOT.

NAMES OF WITNESSES.	VALUATION.		
O. W. Webster	$5,000		
D. B. Howard	5,000		
S. McConiga	5,000		
T. S. Ganter	5,000		
Geo. P. Tucker	5,000		
J. H. McMurtry	5,000		
J. P. Lantz	4,500	Lowest val.	$4,500
Barth. Cox	5,000		
W. S. Latta	5,000		
J. B. Sweet	5,000		
R. R. Tingley	5,500	Highest val.	5,500
L. W. Billingsley	5,000	Average val.	5,000

If we admit:

Hiltner	$4,738.35
Roberts	4,081.70
The general av. would be	$4,914.32
Allowed by the master, only	4,300.00

A. P. S. STEWART REDFORD LOT.

O. W. Webster	$4,000		
D. B. Howard	4,000	Lowest val.	$4,000
S. McConiga	4,000		
T. S. Ganter	4,000		
Geo. P. Tucker	4,500		
J. H. McMurtry	4,000		
J. P. Lantz	4,500	Average val.	4,291.66
B. Cox	4,500		
W. S. Latta	4,500		
J. B. Sweet	4,500		
R. R. Tingley	5,000	Highest val.	5,000
L. W. Billingsley	4,000		

If Hiltner and Roberts are included:

Hiltner	$2,735.47
Roberts	3,033.50
The average would be	$4,090.07
Allowed by the master, only	3,350

D. B. ALEXANDER, TRICKEY BUILDING.

O. W. Webster	$4,000		
D. B. Howard	4,000		
S. McConiga	3,700		
T. S. Ganter	3,000	Lowest val.	$3,000
Geo. P. Tucker	4,700	Highest val.	4,700
J. H. McMurtry	4,000	Average val.	3,858.33
J. P. Lantz	4,000		
B. Cox	4,000		
W. S. Latta	3,500		
J. B. Sweet	4,000		
R. R. Tingley	4,700		
L. W. Billingsley	3,200		

If Hiltner and Roberts are included:

Hiltner	$2,212.50
Roberts	2,349
The general average would be	$3,618.67
Allowed by the master, only	2,600

We now here insist that, while men may fairly differ in opinion as to the best method of arriving at the value of these brick buildings that have been used some years, still it is beyond contention that estimates placed upon buildings completed, and which were bringing in a present income, by men qualified to do so, was competent evidence, and should have been considered by the master.

L. B. & M. R. R. Co. vs. Winslow et al., 66 Ill., 220.
Vol. 1, Sutherland on Damages, p. 798.

Sixth. The next error of the master and of the court in its final decree extends alike to each of the appellants—Little, Alexander, and Stewart—and is pointed out in the fourth exception to the master's report, on pages 560, 561, and 563 of the record.

It consists in this, that these appellants were, contrary to the occupying claimants' law, and contrary to equity, charged with rents upon their own investments and improvements placed upon these lots as well as upon the lots themselves from June 13th, 1880, to December 31st, 1882.

Looking to the statutes we could not be charged with rents either upon the lots or the improvements for any date prior to the service of process upon the appellants. The section of the statute bearing upon this subject is as follows:

SEC. 4. (Duty of appraisers.) The appraisers shall jointly proceed at once, after service of said order on them, to view the real estate in question, and to assess the value of all lasting and valuable improvements on the same, previous to the party receiving actual notice as aforesaid of said adverse claim. They shall also assess the net annual value of the rents and profits which the occupant or claimant has received *after having received notice of the successful claimant's title by service of process;* and they shall deduct the amount thereof from the estimated value of the improvements aforesaid. They shall also assess the value of the land in question at the time such occupant went into possession thereof, or such claimant commenced to pay the tax thereon, as the case may be.

See also on this subject the following cases:

Griswold vs. Bragg, 48 Conn., 577.
Abbey vs. Doe, 27 Miss., 320.

If we look to the rule in equity instead of the statute, the decree is not less objectionable. It gives the appellants only the present value of the improvements and not their prime cost and interest thereon, in such case, in equity the occupant can only be charged with *the rental value of the land without the improvements.* This rule we submit is especially applicable when applied, as in this case, to unproductive city lots, it is very inequitable to charge us rent on our own property.

We should not have been charged with rents upon our improvements.

Wolcot vs. Townsend, 49 Iowa, 456.
Dugan vs. Von Phul, 8 Iowa, 263.
Ewing's Heirs vs. Handley, 4 Litt., Ky., 363–370.
Neal vs. Hagthrop, 3 Bland's Ch. Rep., 590 and 591; 596–600.
Moore vs. Cable, 1 Johns. Ch., 388.
Jackson vs. Loomis, 4 Cowen, 168.
Brett vs. Yeaton, 101 Illinois, 272.
Adkins vs. Hudson, 19 Ind., 392.
Sedgwick Titles, sec. 678, page 449.

If we are correct, then, in the foregoing, and the appellee is not entitled to the income of our money until we are repaid for our investment in these improvements; or, in other words, if the appellee is permitted to receive his and not our money, a statement of each of these parties' interests, even upon the very favorable report the appellee obtained from the master Kelly, as to the value of the improvements, would, applying equitable principles, be as follows:

S. W. LITTLE.

Value of improvements as found by master and carried into the decree	$4300 00	
Rents on the lot $200 per annum from Dec. 14, '79, to Dec 31, 1882, (see p. 544, Record) when the receiver took possession	609 50	
Balance due Little	$3690 50	
But which should be value of lot. Gen. average		$4914 32
Deduct rent of lot		609 50
Due Little. Correct balance		$4304 82

MARTHA ALEXANDER.

Value of improvements as found by master	$2600 00	
Rent of lot same time at $225 per annum, (see p. 545, Record)	660 00	
Balance due Alexander	$1940 00	
Should be average val. lot		$3618 67
Deduct rent on lot		660 00
Correct balance due Alexander		$2958 67

A. P. S. STEWART.

Value of improvements	$3350 00
Rent of lot same time at $225 per annum, (see p. 545, Record)	660 00
Balance due Stewart	$2690 00

Should be average value of lot.....		$4090 07
Deduct lot rent.....		660 00
Correct balance due Stewart.....		$3430 07

The report and findings of the master are carried into the final decree upon these matters without change, and the decree is erroneous upon this consideration alone as to each of said parties in the following amounts:

S. W. Little is charged rents on both the improvements and lot the sum of.....	$3812 50	
When he should have been charged only with rent on the lot the sum of.....	609 50	
Error against Little	$3203 00	
And if we take the average value of the lot the error is		$3817 32
Martha Alexander charged same.....	$2444 25	
Rent of lot.....	660 00	
Error against Alexander.....	$1784 25	
And if we take the average value of the lot the error is.....		$2802 92
A. P. S. Stewart charged same.....	$2203 00	
Rent of lot.....	660 00	
Error against Stewart.....	$1543 00	
And if we take the average valuation of the lot the error is		$2283 07

(See pages 549 and 573, Record).

If, on the other hand, the accounting is taken under the occupying claimants' law, and the appellees insist upon their right to the rents and profits of the premises in their improved condition, then rents are only chargeable from April 5th, 1882, at the time appearance and answer is made in the cause by filing the cross-bill.

(Page 55 of the Record).

The fifth and sixth exceptions of appellants Little, Alexander, and Stewart, which were overruled, are alike, and as the same were overruled and the report of the master carried into the final decree, it will be convenient to set them forth here; they were as follows:

Fifth exception. For that the said master hath in and by his said report certified that under the occupying claimants' laws of the state of Nebraska, the said Giles is entitled to recover against the value of said several improvements the net annual value of the rents and profits which the said occupants have severally received after having received notice of the said Giles' title by service of process in the said suits of Giles against said several claimants against whom such suits were brought in this court for rents and profits, and as against the others of such occupants from the date of the filing of their original petition in the district court of Lancaster county, Nebraska, whereas the said master ought to have certified and found that said Giles, under the occupying claimants' laws of Nebraska, is entitled to recover, against the value of said several improvements, the net annual value of the rents and profits of the said premises without the improvements, and that he is entitled to recover rents and profits only from the date of the service of the subpœna issued upon the cross-bill of Ezekiel Giles upon said several claimants, or from the date of the appearance of the several complainants to said cross-bill.

Sixth exception. For that the said master hath in and by his said report certified and found, that under the occupying claimants' laws of Nebraska, said Giles will also be entitled to a judgment in his favor for any balance of rents and profits due him from any occupants over the value of such improvements, whereas the master ought to have certified and found, that under the occupying claimants' laws of Nebraska said Giles will not be entitled to any judgment in his favor against any of said claimants of said lands unless the rental value of said tract without the improvements, after the date of the filing of the cross-bill herein by said Ezekiel Giles, and prior to the 31st day of December, 1882, exceeds the value of the improvements of such occupant, and that said Giles will not be entitled to any judgment in his favor, except the value of the building and improvements of such occupant is less than the actual value of the rents and profits of said premises while the same have been occupied by him after the filing of the cross-bill herein, and prior to the 31st day of December, 1882.

Eighth. The circuit court, pursuing the same erroneous view, had on the 31st day of December, 1882, improperly, as the appellants contend, appointed a receiver over the property. (See the Record, page 481.) The property was not property that could get away, and so far as the appellees had any interests in the rents, the owners and occupants were responsible for the small rents that would accrue.

The buildings and improvements were not such as could be removed, being brick structures, and no such grounds existed as would, appellants submit, warrant such an appointment, and the order appointing one should be reversed; further, the court in its final decree, acting upon the same consistently wrong theory, decreed (page 576, Record) the receiver to pay over to appellee Giles all the moneys he had collected from the appellees' lots

and the appellants' improvements together, whereas they should have been apportioned between them, the appellees receiving only the rental value of the lots until the appellants were paid for the improvements. There was no mystery in appointing a receiver and putting him in charge of the property that would give the appellant's property or its income to Giles until they were paid for the property, even if appellant's right to rents on improvements were to properly cease when process was served in the cause for the recovery of the property if the money was not paid by appellee the appellants in lieu of rents would at least equitably be entitled to interest on the balance due them. The amounts thus in the hands of the receiver, as reported by the master at the time of filing his report, and there was quite a further sum at the time of signing the decree, were as follows (p. 572, Record):

Upon the S. W. Little lot $750
Upon the Alexander lot..... 701
Upon the Stuart lot.....1,867

And many of these were rents that had accrued long prior to the bringing of suit. However, as all of the rents collected, down to the signing of the final decree, were insufficient to pay for the improvements, and as Giles is shown not to be responsible for the value of the improvements, the rents should have been awarded to the appellants as far as they would go to pay for the improvements, and the appellants should have a decree for a lien for the balance, if any.

Ninth. Further errors in the decree.

By reference to the decree, pages 573 and 574, we find the court decreed as follows:

5. It appearing that the said Samuel Henderson has erected

upon lots 5 and 6, block 32, Dawson's addition to South Lincoln, improvements of the value (of) $550, and this court finding that he is properly chargeable for the use and occupation thereof from June 13, 1880, to the date of this decree, ten per cent of the said sum, which amounts to $198, upon the payment by the said Giles to the said Henderson of $352, and demand by or on behalf of said Giles in that behalf, the said Henderson shall surrender to the said Giles the said premises.

6. It appearing that the said M. B. Cheney, or his grantor, has erected upon lot one, in block 32 of Dawson's addition to South Lincoln, in said county of Lancaster and state of Nebraska, improvements of the value of $500, and this court finding that he is properly chargeable for the use and occupation thereof from June 13, 1880, to the date of this decree, ten per cent of said sum, which amounts to the sum of $180, upon the payment by the said Giles to the said Cheney of the sum of $320, and demand by or on behalf of the said Giles in that behalf, the said Henderson shall surrender to the said Giles the said premises.

7. It appearing that the said O. P. Austin has erected upon lot 6, in block 38, in Dawson's addition to South Lincoln, improvements of the value of $350, and this court finding that he is properly chargeable for the use and occupation thereof from June 13, 1880, to the date of this decree, ten per cent of said sum, which amounts to $108, upon the payment by the said Giles to the said Austin of $242, and demand by or on behalf of the said Giles in that behalf, the said O. P. Austin shall surrender to the said Giles the premises.

8. It appearing that the said Thomas Woods has erected upon lot 12, in block 41, in said Dawson's addition to South Lincoln, improvements of the value of $450, and this court finding that

he is properly chargeable for the use and occupation thereof from June 13, 1880, to the date of this decree, ten per cent of said sum, which amounts to the sum of $175, upon the payment by the said Giles to the said Woods of the sum of $275, and demand by or on behalf of the said Giles in that behalf, the said Woods shall surrender to the said Giles the said premises.

Now, upon what principle of law, equity, or arithmetic the learned judge made such a decree or finding, we are unable to see. Certainly there is no approved authority on arithmetic with which we are acquainted that makes $198 ten per cent of $550, $180 ten per cent of $500, $108 ten per cent of $350, or $175 ten per cent of $450.

The master found the *present* value of the improvements. His finding was as follows (page 550 of the record):

VII. I find that the following named defendants should be compensated for improvements by them or their grantors placed upon the several lots to the amount of the value thereof, viz.:

Samuel Henderson	Lots 5 and 6, block 32	$550 00
M. B. Cheney	Lot 1, block 32	500 00
O. P. Austin	Lot 6, block 38	350 00
Thomas Woods	Lot 12, block 41	450 00

They should severally, in like manner, be charged with the rental value of said premises from June 13, 1880; *but no proof having been heretofore made, the amount of such charges cannot now be made.*

He also found the value of the lots to be (p. 541, Record):

Henderson's	$300
Cheney's	175
Austin's	125
Woods'	200

Therefore, if the court could allow something for the rental value of the premises, although no proof of the rental value was made in the cause as the master reported, and if the court further thought itself justified in allowing the appellee a *percentage* on his investment, he should have allowed only the legal rate in Nebraska on the value of the lot. And if rent is allowed prior to the date of appearance of appellee to the bill, this would give Henderson seven per cent on $300 for three and one-half years; $73.50 to date of decree, deducted from $550, gives his balance $486, instead of $352, as decreed.

Similarly, Cheney's would be $457.48, Austin's $319.37, and Woods' $416.25.

Evidently there is no legal basis upon which the decree as rendered can be sustained.

The following further errors of a minor character in the decree are, that the statute requiring the succesful claimant of property to pay to the occupant all taxes he had paid upon the same, with interest at the rate delinquent taxes bear in Nebraska, *is utterly ignored* as to all the appellants, except perhaps Stuart, and the decree should be corrected in this particular.

ERROR IN COSTS.

The court erred in awarding five hundred dollars costs against these appellants, which it allowed to the guardian *ad litem* of certain infant defendants to the original bill.

The decree (p. 577, Record) is:

"The sum of five hundred dollars is allowed to the guardian "*ad litem* of the infant defendants in the original bill and shall "be taxed as costs against the plaintiffs in said bill."

That part of the decree is erroneous.

This cause concerns real estate in Nebraska. The rights of the several parties to the same depend upon conveyances and instruments made and recorded in that state. The suit was brought by the plaintiffs to the original bill in the state court of Nebraska, where such a claim for costs, we think we may safely assert, was never made, and we know of no rule of this or the circuit courts that gives the circuit courts *unlimited* power and discretion to inflict costs of the character of these upon the losing party.

It will be observed also that the appointment of the guardian was made on the 30th of January, 1883, after the proof in the principal case was closed and at the same term the decree upon the original bill was signed (see Record, pp. 484 and 483), the guardian *ad litem* accepting the proofs already taken and submitting the cause and their rights thereon; that one of the minors, Minnie S., had already deeded her interests to Burr and Wheeler, who claimed to have deeded it to Giles (see page 92, of the Record). In fact, by conveyances through Burr and Wheeler, Giles claimed the entire interests of both these minor heirs, and was claiming to litigate their rights and interests.

The counsel of Giles was appointed their guardian, and the appointment and the proceedings and the final decree seem but a convenient method of taxing, in behalf of the appellee Giles, an unauthorized five hundred dollar attorney fee under the name of costs. We submit this part of the decree is erroneous.

Such costs are not allowable unless there is a statute authorizing them.

Williams et al. vs. Ewing & Fanning, 31 Arkansas, 235.
Ferguson vs. Dent, 15 Federal Reporter, 771.
Union Ins. Co. vs. Van Rensselaer, 4 Paige Ch., 185–186.
Gatt vs. Cook, 7 Paige Ch., 523.

SIXTH.

CONSTRUCTION OF THE WILL.

Our statute on wills, section 124, on page 226 of Compiled Statutes of 1881, says that, "every devise of land, in any will, shall be construed to convey all the estate of the devisor therein, which he could lawfully devise; unless it clearly appears by the will, that the devisor intended to convey a less estate." This statute was intended to do away with the common law rule of the construction of wills, which was, that the heir was not to be disinherited unless the intent to do so was clearly expressed. The rule now is the converse of that. Wherever there are doubts of whether or not a fee was intended, the doubts must be held in favor of the fee passing.

This statute has undergone an interpretation by the supreme court of Michigan, from which state the statute was incorporated into the laws of Nebraska, both prior to and after the statute was enacted in Nebraska, in the case of Weir vs. The Michigan Stove Company. There the will read as follows: "In the name of God, amen. I, Hugh Andrew Young, of the city of Detroit, county of Wayne, and state of Michigan, of the age of fifty-five years, and being of sound mind and memory, do make, publish, and declare this my last will and testament, in the manner following, that is to say, I give and bequeath all my property, of whatsoever nature, to my wife Euphemia, she paying all my just and lawful debts. The half of the residue after her decease to be paid to my two sisters in Scotland, share and share alike; if either should die before my wife's death, then the other to have the full half; if both should be dead, then let it be divided between their nearest heirs; the other half to be disposed of as my wife directs, as I hereby appoint her my sole executrix of this my last will and testament." In this case the will reads as follows:

"After all my lawful debts are paid and discharged, the residue of my estate, real and personal, I give, bequeath, and dispose of as follows, to-wit: To my beloved wife, Edith J. Dawson, I give and bequeath all my estate, real and personal, of which I may die seized, the same to be and remain hers, with full power, right, and authority to dispose of the same as to her shall seem meet and proper, so long as she shall remain my widow, upon the *express condition*, however, that if she should marry again, then it is my will that all the estate herein bequeathed, or whatever may remain, should go to my surviving children, share and share alike, and in case any of my children should have deceased, leaving issue, then the issue so left to receive the share to which said child would be entitled. I likewise make, constitute, and appoint my said wife, Edith J., to be executrix of this my last will and testament, hereby revoking all former wills made by me."

The meaning of the words, "whatsoever remains at the date of her marriage," certainly seems to contemplate that she may sell and dispose of an indefinite portion of both the real and personal property.

In the Michigan case they speak of the "residue" and what remained at the death; here they speak of "whatsoever remains."

See Weir vs. Michigan Stove Co., reported in the Northwestern Reporter, Vol. 8, p. 78.

It does not seem to us that the court is at liberty to ignore this statute. It was passed for the sole purpose of changing the common law rule of the interpretation of wills. The legislature intended that it should do away with the old English common law, which favors monopoly and opposes alienation, and in favor of

the adoption of the American rule, which favors alienation and the obtaining of a fee.

The doubt, which under the old common law is to be solved in favor of the heir, is now to be solved in favor of the devisee, and there is no court that has had this provision under consideration but what has given it this construction.

Cleveland vs. Spillman et al., 35 Ind., p. 98.
Smith vs. Meiser, 51 Ind., p. 422.

We think further that this is in accordance with the construction given by the supreme court of the United States.

King vs. Ackerman, 2 Black., U. S. Sup. Court Rep., p. 415.

The court say in that case, it is a well-settled rule, that where a devisee whose estate is undefined, is directed to pay the testator's debts, or a legacy, or specific sum in gross, he takes the estate in fee.

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IN THE

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Appellees.

REPLY TO APPELLEES' BRIEF.

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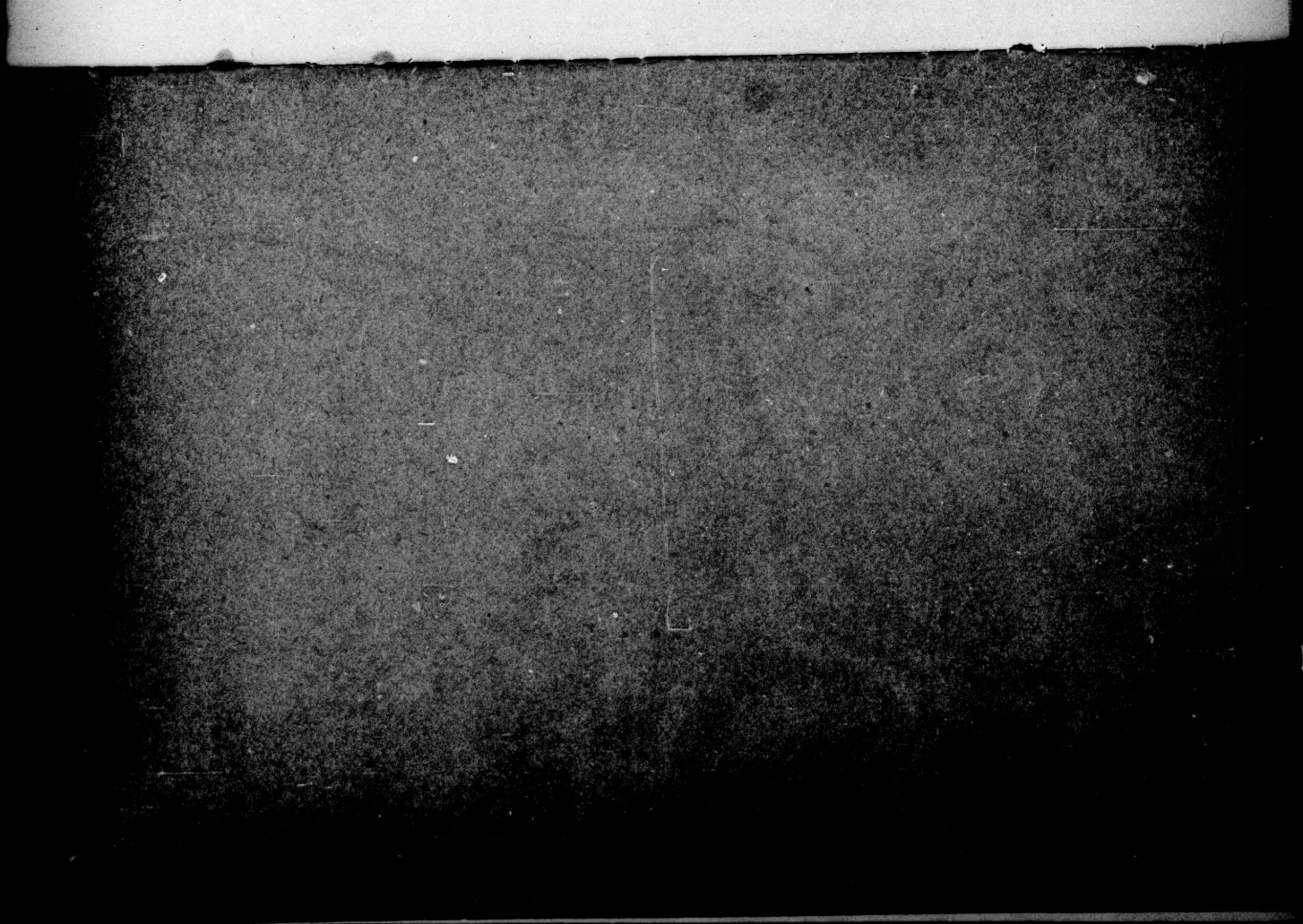

IN THE

SUPREME COURT OF THE UNITED STATES.

S. W. LITTLE ET AL.,
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REPLY TO APPELLEES' BRIEF.

We desire to avail ourselves of the right of reply, secured by stipulation with the appellees, to point out some inconsistencies and correct some misstatements contained in the printed argument of the latter.

The original case is one to prevent the multiplicity of suits.

There is the same general right in all complainants though holden by each of the several numerous persons distinctly.

In such case equity, as well as the civil code of procedure in force in the state court where the suit was brought, allows a single suit to be prosecuted by all the parties to try such general right, though holden by the several persons distinctly.

The general right in such case is the real matter in controversy.

Jurisdiction in such case in equity rests upon the fact that there is such general right to be tried. Where a court of equity properly has jurisdiction of the case because such general right is involved no matter how numerous the parties, it is a single suit and if the whole matter involved in the litigation is sufficient to warrant an appeal the case is properly appealable.

Omitting all other points which might be urged, obtaining a construction of the will was such general right as all sought to have adjudicated.

Mayor of York vs. Pelkinson, 1 Atk., 282.
Section 43, title 3, Civil Code, Nebraska.
Section 96, title 7, Civil Code, Nebraska.

I.

With reference to the extent of the tract of land and consequent value of the interest of the appellant A. W. Hawley, independently of the plain import of the pleadings and affidavit of values, that the Hawley tract consists of 60 acres, but from which counsel for appellees attempts to draw a different inference by a kind of criticism too subtle for us to follow, we have in the record the motion for the reference to the special Master Kelly, page 485, requiring him to report "what portions of the lands and tenements in the cross bill described were at the time of the filing of said cross bill in the quiet and peaceable possession of said defendants or of any of them claiming title thereto," etc.

This motion was the basis of the order of reference as by stipulation, pages 486–487, and the Master finds page 543:

"The holdings of said parties are:

" N.W., S.E., 19, 10, 6, 40 acres, A. W. Hawley.
" N. ½ S.W., S.E., 19, 10, 6, 20 acres, A. W. Hawley.
" E. ½ W. ½ S. ½ S.W. S.E., 19, 10, 7, 5 acres, H. O. Snow.
" W. ½ W. ½ S. ½ S.W. S.E., 19, 10, 7, 5 acres, S. Arthur.
" E. ½ S. ½ S.W. S.E., 19, 10, 7, 10 acres, Geo. Warder."

Exceptions being filed to this report, they were overruled and the report confirmed, page 570, and in the final decree, page 575, paragraph 10, it is expressly found by the court that the Hawley tract is as above described, "that is to say, the north-west quarter of the south-east quarter and the north half of the south-west quarter of the south-east quarter of section 19, town 10, range 7 east, in Lancaster county, being 60 acres," etc. The value found by the Master was as of the time of the filing of the cross bill—see his report and the order of reference—between that time and the rendition of the decree, when the affidavits were filed, the value as a matter of fact more than doubled.

The question whether the appellees can escape the jurisdiction of this court as to those appellants whose holdings are less than $5,000 depends, in our opinion, upon another matter. If as to these latter as well as to those whose holdings exceed that value, the circuit court had no jurisdiction, then we understand that as to them, as well as the others, this court has jurisdiction regardless of values, so to declare. If, as we anticipate, your Honors should hold with us on the question of jurisdiction, we do not expect you will remand the case as to a part of the appellants and allow the circuit court to retain jurisdiction as to the residue of them. So to do would be to make the jurisdiction of *that* court depended on the amount or value in controversy exceeding five thousand dollars.

Babbitt vs. Clark, 2 Morr. Trans, 606.

And this whether the question of jurisdiction was passed upon by the circuit court or not.

Hancock vs. Holbrook, 5 Sup. Ct. Rep., 115.

II.

Without repeating a portion of the agument in our first brief, let us suppose, for the sake of argument only, that there is a separable controversy between Giles on the one side and each of the defendants in the cross bill on the other; it does not follow hence that the controversy is also separable between the plaintiffs or any of them in the original bill and any of the defendants therein. Take one of these plaintiffs—Hawley, for instance. He charges Giles, Burr and Wheeler, Minnie S. Dawson, and the others with having committed and being about to commit specific joint wrongs against him. Grant that all that he charges them with is in fact lawful; still, whatever they have done and are about to do is and will be the joint act of all, and the lawfulness or otherwise of their conduct is of the very gist of the controversy he has with them, and this controversy is not separable.

> Plymouth Consolidated Gold Min. Co. vs. Amador et al., 6 Sup. Ct. Rep., 1034.

The citizenship of Minnie S. does not appear otherwise in the record than that she was served with process in Nebraska, and the supplemental bill alleges her to be a citizen of that state. Jurisdiction in the circuit court is therefore not shown.

> Hancock vs. Holbrook, *supra*.
> Sloane vs. Anderson, 6 Sup. Ct. Rep., 730.

If counsel for appellee did not take this view of the matter why did he apply to be appointed the *guardian ad litem* of Minnie S. and of Carlton Dawson, who stands in the same situation? And why was he so appointed? And why did he ask leave to file a "further" cross bill for them, if there was not one already on file? And why did he, this leave being denied, file an answer for his wards, putting in issue all the allegations of the bill? It is plain enough that if we committed any error in this regard counsel is equally guilty.

III.

Counsel says in the same breath that appellants never brought the objection to the jurisdiction to the attention of the circuit court, and that they did do so, and so effectually that they are now concluded by the determination of that tribunal. It does not depend upon our iteration, but is apparent from the most cursory examination of the record that almost the sole question litigated in the circuit court was that of jurisdiction. Why is the decision upon the abatement in the Owen and Oakley case final? It was not stipulated that it should be final. It would not have been final in that case; why should it be in this? It was merely stipulated that it "should be taken and entered" in this case. From the oversight of both parties, probably, that was not done, but if it had been how would it have differed from an ordinary decision in this case, upon the same issue, made in the usual way? What ground is there for the assumption that parties intended to waive their right of review? Counsel says it would not have been reviewable in the Owen and Oakly case because that was a suit at law, and there was some evidence to support it. How does it follow thence that it would not be reviewable in this case in equity? What support has his main proposition in authority or reason? Not the decisions of this court, certainly. Does not the statute expressly give the right to review decisions upon the question of jurisdiction, and has this court ever reviewed one, in a law case or other, without discussing and determining questions of fact? Certainly appellants are in no worse plight than if this decision had been made and entered in this cause, and then the appeal would have brought the whole matter up. It would not have been necessary to docket the cause more than once.

Plymouth Consolidated Gold Min. Co. vs. Amador, *supra*.

What is the evidence which counsel cites as supporting this decision? Solely the testimony of Burr and Wheeler as to what was their

intention, and what secret motives actuated them in abandoning the Sherwin suit in the state courts and in resorting to the Federal tribunal; and he says we are bound by this testimony because we did not "contradict" it, or, as we understand counsel, did not get Burr and Wheeler to testify, as they were the only persons who certainly knew their own secret intentions and motives, that these were not such as they had already said they were. "No amount of evidence to the contrary," (from these gentlemen's assertions), says counsel, "can establish fraud against that undisputed fact." This is an exhibition of what in the Wild West is called "cheek."

IV.

Counsel indulges in an elaborate criticism of the pleadings to establish, as he supposes, that the petition as originally framed in the state court, did not charge Giles' grantors with retaining a joint interest with him in the premises. In a sense this is perhaps true, for it is alleged, that both the conveyances from the Dawsons to Burr & Wheeler, and from the latter to Giles were colorable merely and without any valid consideration, and were retained and controlled by Burr & Wheeler for the unlawful purposes set forth, and hence conveyed nothing. The pleading, however, was a presentation of the facts so far as they had come to the knowledge of the appellants at the time it was filed. In the progress of the cause, others were discovered and presented by a supplemental bill. As to what was the nature of the controversy, whom it was between, and what were the interests of the parties, we suppose your honors will determine from the whole record, and not from such parts of it as counsel may select.

V.

Counsel contends that there is no controversy between appellants and the appellees other than Giles, because the latter have no interest,

and then proceeds to argue at great length that the facts are not sufficient to raise an estoppel against them. The very fact that counsel contends refutes his proposition. His very effort to evade a controversy involves one. Whether Burr & Wheeler and the Dawsons have an interest, and if so, what is its nature and extent, and whether all or any of them are estopped to assert an interest, and if so, whether such estoppel is operative against their grantee, Giles, are among the very matters in controversy, for the determination of which the presence of all the parties is necessary. The dispute on the part of appellants may be never so futile and foolish, and it may have been provoked in never so bad faith, but counsel is not commissioned so to determine. That determination must be made by some court before which the action is pending, and it can only be made in the disposition of the controversy itself. Counsel has, perhaps, not read the recent cases of Cushman v. Amador, and Sacramento Canal Co., 6 Sup. Ct. Rep., 926. Fidelity Insurance, etc., Co. v. Huntington, 6 Sup. Ct. Rep., 733. Sloane v. Anderson 6 Sup. Ct. Rep., 730.

VI.

There is no former adjudication between Little and any of the appellees upon any question of jurisdiction, hence there is nothing in this regard to which the doctrine of *res adjudicata* invoked by counsel can apply.

VII.

Counsel, evidently with the impulses of a drowning man catching at straws, contends at great length under his third point, that "even if the original bill were improperly removed from the state to the circuit court" the latter still had jurisdiction of the cross-bill. See his brief, page 24. This proposition, in our view, involves too many absurdities to admit of serious refutation. The cross-bill and the answer thereto raise precisely the same issues, and none other, as are

raised by the original and supplemental bills and the answers thereto. If the former can be retained the right to remand, the latter is barren and valueless. If such is the rule, jurisdiction in the circuit court over causes not removable can always be obtained by means of a cross-bill.

VIII.

The case of Holland v. Challen in 110 U. S., 15, cited by counsel for appellees, is not authority for bringing an ejectment bill against adverse claimants of real property in possession. The property in that case was described in the bill as "unoccupied, wild, and uncultivated land," and the court say in the opinion: "It does not follow that by allowing in the federal courts a suit for relief under the statute of Nebraska, controversies properly cognizable in a court of law will be drawn into a court of equity. * * * * Should a suit be brought in the federal court under the Nebraska statute against a party in possession, there would be force in the objection that a legal controversy was withdrawn from a court of law."

IX.

The appellees in their seventh point present four objections to our exhibit of the errors in the decree with regard to the improvements on the lands taken from the appellants. These objections may be summarized as follows:

First. That the statute of Nebraska, of 1883, relating to occupying claimants of lands is inapplicable.

Second. That if applicable it is unconstitutional.

Third. That as deeds from Cody to the appellants were not offered in evidence, therefore the appellants were not under the statute, *bona fide* occupants or claimants of the premises.

Fourth. That the case of Green vs. Biddle, 8 Wheaton 1, holds a doctrine contrary to that laid down in Bright vs. Boyd, 1 Story 478, generally recognized in this country.

We reply to each of these in their order.

First. The supreme court of the state of Nebraska in the case of The B. & M. R R. Co. vs. Dobson, 17 Nebraska at page 455, has settled the law in that state as to the validity and applicability of the occupying claimants, law passed Feb. 23d, 1883, and held the law valid and applicable to all cases pending or determined at the time the law was passed. See also Canal Bank vs. Hudson, 111 U. S. R., 66.

Second. Further as to the second point we submit that the case of Green vs. Biddle is not in point. The statute of 1883 was a substitute for a similar statute in force when the improvements in this case were made. In such case the constitutional question is not involved. Judge Cooley in Kiddy's Guild, 48 Michigan 307, speaking for the court says:

Whether there is any constitutional objection to making statutes which give to occupants, from whom lands are recovered, the value of their improvements, apply to the improvements made before their passage, quaere. There certainly is none where the statute under which suit is brought is the substitute for another which would have allowed the recovery, and which was in force when the improvements were made.

See also Scott vs. Mather, 14 Texas 234 and 237.
Lessees of Davis vs. Powell, 13 Ohio 308.
Stebbins vs. Guthrie, 4 Kansas 354.

Third. It is objected that the appellants did not offer certain deeds in their chain of title in evidence, and so do not come within the pro-

visions of the statute. We see no force in this objection. Their several titles as *bona fide* holders under deeds from Cody are distinctly stated in their bill, expressly admitted in the answer of Giles, and specially found by Kelly the master. Note the following from Giles' answer, page 47 transcript:

"He admits the said plaintiffs respectfully claim the several parcels of land whereof the said Jacob Dawson died, siezed as in the said bill in that behalf is alleged, and that their claim is based upon deeds of conveyances which were made by the said Edith J. to them respectively, or their several grantors, and that considerable improvements have been made upon said lots and parcels of land. But what the cost or value of said improvements may be this defendant does not know, and has not been informed save by bill, and cannot state save that they did not cost and are not of the value by said plaintiffs, in their said bill alleged; but this defendant denies that said plaintiffs, any or either of them, is seized in fee, or has, or since the marriage of said Edith J. with said Pickering has had any estate whatever in said lots, parcels, and lands, or any part thereof."

And note the following from the findings of the master:

I find as to the premises, tracts No. 1, Owen and Oakley; No. 2, S. W. Little; No. 3, Martha Alexander; 4, A. P. S. Stuart, as hereinbefore described, being the several premises with the buildings thereon known as the Turner, May, Trickey, and Redford buildings. These lots at the death of Jacob Dawson, were occupied by him, on or about the 27th day of April, 1870, Edith J. Dawson, covenanting to be the owner in fee simple of all the w. ½ of lot 3 and lots 4, 5, and 6 of block 54 in Lincoln, by her general warranty deed "which in terms purported to convey the fee simple of said lots," conveyed the said lots to one Aldus Cody in consideration of the sum of $10,000, which said sum was the then full value of the fee simple title to said lots; that said Cody thereupon at once went into possession of said premises

and erected thereon three of the above named buildings, viz., the Redford, Trickey, and Turner buildings, all of which were erected in 1871. The May building was erected and completed May 1st, 1878, by S. W. Little.

I find that at the time of the termination of the life estate as found by the court in said decree said above described premises were severally in the quiet possession of said several defendants or their immediate grantors, and from the pleadings as remote grantees of Edith J. Dawson under the conveyances above found and referred to under a claim of title in fee simple to said several tracts as appears from the pleadings herein.

Fourth. In the case of Green vs. Biddle the occupants entry upon the premises was wrongful in this view the case is in accord with the general rule laid down in many cases.

Griswold vs. Bragg, 48 Conn., 582.

While the case of Bright vs. Boyd is cited and approved by more than a dozen of the highest courts in this country, as well as by this court in the case of Canal Bank vs. Hudson, 111 U. S. R. 82 and 83.

Constructive notice is not sufficient to prevent the occupant from recovering for his improvements, and where the occupant has a life estate he may recover if he had reason to believe he had an estate in fee. Malone on Real Property Trials pages 140, 141. See also Dean vs. Feely, 69 Georgia, 814, 815. In which it is said that no case is cited awarding to the remainder man the improvements where the life tenant placed them upon the premises under the belief that he held the fee.

X.

To the suggestion in the appellees' eighth point that this court will

not enquire into the five hundred dollars illegal allowance of fees to counsel, we reply that this court in the case of Bendry and Wife vs. Towsend, 109 U. S., 655, not only enquired into such a matter but set aside one hundred dollars illegally allowed in an analogous case.

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118-596

SUPREME COURT OF THE UNITED STATES.

S. W. LITTLE ET AL., *Appellants*,

vs.

EZEKIEL GILES.

MOTION TO DISMISS APPEAL OF CERTAIN APPELLANTS AND ARGUMENT OF APPELLEE IN SUPPORT OF THE DECREE.

L. C. BURR,
Solicitor for Appellee.

J. M. WOOLWORTH,
Of Counsel.

IN THE UNITED STATES SUPREME COURT.

S. W. LITTLE ET AL., *Appellee*,

vs.

EZEKIEL GILES.

MOTION TO DISMISS APPEAL.

Now comes the said appellee, by L. C. Burr, his solicitor, and moves the court to dismiss the appeal in this cause, so far as the same relates to any of the appellants, except Little, Alexander and Stuart, for the following reasons:

First. This appellee prays the dismissal of the appeal of Owen, Oakley, and Aughey on the ground that the controversy between them and this appellee has been settled, as appears by their deeds filed herewith.

Second. This appellee prays the dismissal of the appeal of the other appellants, excepting Little, Alexander and Stuart, on the ground that each of them had a separate controversy with him, and that all of them together have not a joint controversy with him, and the interest of no one of them is of the value of $5,000, as appears by the record in this case.

The reasons in support of this motion are set forth in the argument of the appellee in the principal case.

L. C. BURR,

Solicitor for Appellee.

J. M. WOOLWORTH, *Of Counsel.*

IN THE UNITED STATES SUPREME COURT.

S. W. LITTLE ET AL., *Appellants*,

vs.

EZEKIEL GILES.

ARGUMENT FOR APPELLEE.

This is an appeal from a decree of the Circuit Court for the District of Nebraska.

It was originally an action in equity, brought in the district court of the State of Nebraska, for Lancaster county, by S. W. Little, and others, who, in their petition named seventy-four plaintiffs. But forty of them promptly filed affidavits, in which they said that they had not authorized the bringing of the action in their name or in their behalf, and disclaimed it. The defendants named in the petition were Ezekiel Giles, H. H. Wheeler, L. C. Burr, Albert L. Dawson, William R. Dawson, Sarah H. Dawson, M. C. Dawson, M. S. Dawson, A. A. Knicely, William R. J. Goodin and Melita C. D. Tillman (see page 1). Of these the only ones served with process were Wheeler, Burr, Albert L. Dawson, M. S. Dawson and Melita C. D. Tillman (see pages 12, 14). Nor, besides Giles, did any other persons named as defendants in the petition, appear or plead thereto, except those stated above to have been served with summons. All who were served, except Giles, filed disclaimers of all interest in the premises.

As stated at page IV of the brief for the appellants,

the original petition was in the nature of a bill *quia timet*. Each of them claimed a separate parcel of the premises. Mr. Giles, on the other hand, by his cross-bill, sought like relief against such of the original plaintiffs as did not file affidavits repudiating the action brought in their names.

To the three or four statements of facts which the learned counsel for appellants have laboriously given the Court, it seems unnecessary to add another. Nor, having regard to the voluminousness of the record, and the many questions of jurisdiction, practice and procedure which have been raised, is it convenient to do so. What needs to be re-stated will be given under the several points of this argument.

FIRST POINT.

The first question which presents itself is, what are the rights of the parties in the premises? It need not detain us long. The appellants themselves do not have confidence in their claim: they reserve it to the end of their repetitions, and dispatch it in less than three of the more than one hundred pages of their "brief." Their lack of confidence is accounted for by the fact that this question has been answered against them by this court.

On the 22d of June, 1869, Jacob Dawson died seized of the premises, leaving his last will and testament, which was as follows:

"In the name of God, Amen. I, Jacob Dawson, of the town of Lincoln, in the county of Lancaster, and State of Nebraska, being of sound mind and memory, and

considering the uncertainty of this frail and transitory life, do therefore make, ordain, publish and declare this to be my last will and testament, that is to say:

"After all my lawful debts are paid and discharged the residue of my estate, real and personal, I give, bequeath, and dispose of as follows, to-wit: To my beloved wife, Editha J. Dawson, I give and bequeath all my estate, real and personal, of which I may die seized, the same to be and remain hers, with full power, right and authority to dispose of the same as to her shall seem meet and proper, so long as she shall remain my widow, upon the express condition, however, that if she should marry again then it is my will that all of the estate herein bequeathed, or whatever may remain, should go to my surviving children, share and share alike, and in case any of my children should have deceased leaving issue, then the issue so left to receive the share to which said child would be entitled. I likewise make, constitute and appoint my said wife, Editha J. Dawson, to be executrix of this my last will and testament, hereby revoking all former wills made by me."

This will was duly proved and admitted to probate, and letters testamentary were issued to Mrs. Dawson. (pages 83-90 of the record.)

He left surviving him his wife, Editha J., and six children, named John Hampton, who died intestate and without issue in 1871; William R., who died in 1880, Melita C. Tillman, Evaline, who died in 1880, Albert L.

and Minnie S. (page 417). On the 25th of December, 1881, Melita C. married JosephTillman (page 411). On the 6th of February, 1879, Evaline married A. A. Kniceley (page 109).

On the 14th of December, 1879, Mrs. Dawson married Henry M. Pickering (page 107). The plaintiffs severally claim the premises in question by mesne conveyances made by Mrs. Dawson, between the death of the testator and her second marriage. Mr. Giles claims by mesne conveyances from the children of the testator. The dispute is to be determined by a construction of the will.

In *Giles vs. Little*, 104 U S. 291, this will was before the Court for construction. It was an action of ejectment brought by Giles, the defendant in the original bill, against Little, one of the plaintiffs therein, for the same parcel of land which the latter claims here. This Court held that under the will, Mrs. Dawson took an estate for life, determinable upon her marriage, and the children took the remainder; and that upon the happening of that event they became seized in fee, notwithstanding her deed to Cody, under whom Little held. In that case it was alleged, and it is here proved, that the testator died possessed of personalty of the value of $958, (page 89), and that Mrs. Dawson was seized in her own right of lands of the value of $10,000 (page 81).

As between Giles and Little, the question is settled; it will not be reconsidered here. And no considerations are presented in behalf of the other claimants in the same

right, which were not urged in the other case.

In their several pleadings in this suit, the appellants charge Giles, and Burr and Wheeler, who conveyed to him, and the Dawsons, who conveyed to Burr and Wheeler, with a wicked conspiracy to vex and annoy them with suits and proceedings and unfounded claims. They have put their charges in every form of violent words, as if reiteration added support to their contention. All those allegations may be dismissed with the simple statement, that, according to the judgment of this Court, these alleged conspirators are the parties who successively held the true title, and these appellants, who are so free and fluent in their denunciations, claim what is not their own. No one can find fault with them for insisting on their claim, until this court decided against it. It was an open question—what was the proper construction of the will, and the rights of the parties thereunder—and either of them might fairly contend for what was in its favor. But when this Court, in an elaborate and unanimous opinion, decided that question, it became the appellants to submit to it. Instead of doing so they contrived this action, and to give it another complexion they accuse us of conspiring, with wicked and fraudulent intent, to cloud and encumber their titles, and disturb and harass them by various and vexatious suits, in order to extort large sums of money from them, and enjoin us from prosecuting our actions to recover what this Court had decided was our own property. Their idea seems to have been that, by enveloping the real and

substantial question, in a cloud of violent accusations of blackmail, they could withdraw the controversy from the Federal Courts, whose judgments were adverse to them, into the state courts, where they hoped for another result. Such matter will be dismissed from the consideration of the case, and it will be determined upon the fundamental principle involved.

SECOND POINT.

Except Alexander and Stewart, no one of these appellants can be heard here.

1. Little's claims have already been determined by this Court against him and can not be reconsidered on this appeal.

Supervisors vs. Kennicott, 94 U.S. 498;
Clark vs. Keith, 96 U.S. 464.

It is true that in these cases the question once ruled was presented a second time in the same case, while here the cases are different. But, as between Giles and Little, the question is the same, the property is the same, the parties are the same, and the result ought to be the same. Little will not be suffered to escape a salutary principle by the contrivance of another form of action, conceived for no fair and honest purpose. Had he left us to our ejectment against him, in an orderly litigation, and, failing in the Circuit Court, had he brought the judgment to this Court for review, he could not have been heard. By enjoining that action, and complaining as he does in this original petition, he cannot succeed in his attempt to reopen

and agitate again what has here been decided against him.

2. Since the decree, Giles and Owen and Oakley have settled their dispute, as appears by the papers filed herewith.

3. No other one of the appellants has an interest which will support the jurisdiction of this Court. Beginning at page 580, we have six affidavits of value. The first relates to the lot claimed by Owen and Oakley, with whom we have settled. The second, third and fourth relate to lots claimed respectively by Alexander, Stuart and Little. The fifth is as follows: the four deponents each for himself, says that "he is acquainted with Allen W. Hawley tract, the north-west quarter of south-east quarter of section nineteen, and the north half of the south-west ——— of south-east quarter, all of section nineteen, town ten, range six east, in Lancaster county, Nebraska, and that in the opinion of the affiant the said lands are worth and are of the value of one hundred dollars per acre and that the value of said tract of land exceeds the sum of five thousand dollars." We have here sixty acres of land shown to be worth over $6000. If they were all claimed by one person, he could appeal. Probably, if they were all claimed by several persons as joint tenants, or as tenants in common, they could appeal. But several persons claim this tract, not jointly or in common, but in severalty, each a specific part of it. This appears as follows:

The original petition alleges that Mrs. Dawson conveyed in fee the west half of the south-east quarter of section nineteen, and that Hawley, Warder, Snow and Arthur, by reason of her conveyances and others subsequent thereto, became seized in fee of this half quarter section of land, of which Hawley owns 60, Arthur 5, Warder 10, and Snow 5 acres (p. 6.)

Upon the reference to him as to the value of the several premises, the master reports the land claimed by Hawley to be worth $60 per acre, and the trees thereon $500. (p.543.) The value of his interest is thus shown to be only $4100.

The answer, after giving an account of the manner in which Mrs. Dawson's interest in this tract was lost to her says that "the said Hawley, Warder, Arthur and Snow purchased the west half of the south-east quarter of section nineteen, etc. (page 46). But for this statement, there would be no proof in this record to show that any one of the appellants had any interest in this tract.

It will be noticed that the bill mentions eighty acres, and the affidavit sixty. The bill says Hawley owns sixty, Arthur five, Warder ten, and Snow five acres ; It does not state which part of the eighty any one of them owns. It is perfectly consistent with what is alleged, that Hawley owns twenty acres mentioned in the bill, but not in the affidavit, and that Warder's, Arthur's and Snow's lands, which aggregate twenty acres, are part of the land men-

tioned in the affidavit. The value of the twenty acres mentioned in the bill and not in the affidavit, does not appear; it may be valueless, or of very trifling value. So that Hawley is not shown to claim lands of the value of $5,000. He may be shown to claim forty acres worth $4,000, but his other twenty acres may, for all that appears, be worth less than $1,000. He therefore does not claim property of value sufficient to support the jurisdiction. But this statement proceeds upon the claim that Hawley claims title to sixty acres. This is neither admitted or prov ed. There is no evidence whatever on the subject; the answer only admits that he and the three others bought eighty acres; how many each bought is not admitted, so that it does not appear that he has or claims sixty acres.

It is well settled, that it is upon the party who invokes the jurisdiction of this Court, to show clearly and affirmatively that the amount or value of the property in question exceeds five thousand dollars. As this has not been done in respect of the interests of any one of the owners of the sixty acres in section nineteen, the appeal of the claimants thereof must be dismissed upon our motion in that behalf.

The last of the affidavits, on page 583, states "that the value of the real estate (exclusive of the buildings situated thereon,) in controversy in this action in the original bill, and in the cross-bill described, exceeds in amount twenty thousand dollars, and that the value of the property and the amount in controversy in this action

exceeds the sum of ten thousand dollars exclusive of costs."

Jacob Dawson died seized of very considerable estates, among them, lots 3, 4, 5 and 6, in block 54, in Lincoln, (see p. 89), of which Little claims a part, Alexander a part, and Stuart a part. (See petition, p. 3.) He also was seized of the east half of the north-east quarter of section thirty-five, in town ten, north of range six east. (See p. 8.) Mrs. Dawson laid this tract out into lots and blocks as an addition to Lincoln, and sold the lots to many persons. Sixty-one persons are named in the original petition as plaintiffs, each claiming some of these lots—some, one lot each; others, several lots each. The testator was also seized at his death, of the south-east quarter of the aforesaid section thirty-five, (p. 88,) and this is claimed by the plaintiffs Van Dorn and Lashus.

These plaintiffs are thus shown to claim, not all together all of these lands, either as joint tenants or tenants in common. Each claims a separate parcel, in which none of the others have any interest. They join in this suit, not by reason of common ownership, but because their claims are derived from a common source, namely, Mrs. Dawson, and rest upon a common principle. Had all recovered in the Circuit Court, the decree would have been in favor of each one of them by himself. Had some of them failed to trace their title from Mrs. Dawson, the original bill would have been dismissed as to them for that reason, without prejudice to those who succeeded in doing so; and each would have had a decree in his favor,

had their contention in respect of the true meaning of the will been sustained. And so on.

The case then was really a large number of controversies, each of which was between one of the plaintiffs and Giles. In such a case the jurisdiction of this Court is not shown by an affidavit as to the value of all the property in question, but the value of what is claimed by each appellant must appear to exceed $5,000.

Farmer's Loan & Trust Co., vs. Waterman, 106 U. S. 265.
Schwed vs. Smith, Ib. 188.
Adams vs. Crittenden, Ib. 576.
Stewart vs. Dunham, 115 Ib. 61.
Hawley vs. Fairbanks, 108 Ib. 543.
Fourth Nat. Bank vs. Stout, 113 Ib. 684.
Seaver vs. Bigelow, 5 Wall. 208.

The appeal should be dismissed as to all of the parties but Alexander and Stuart, unless Little be excepted. As to him, the question ought not to be agitated here, that the will gave Mrs. Dawson only a life estate, and on her marriage with Pickering, the children of the testator and their grantees become entitled to the premises.

THIRD POINT.

The cause was rightly removed from the State Court, and there is no just objection to the jurisdiction of the Circuit Court.

1. We shall first consider whether the removal was proper as the case stood at the time it was ordered It is necessary to a clear understanding of its nature and situa-

tion to state the contents of the original petition.

After setting forth the premises of which Jacob Dawson died seized, his will and the probate thereof, and the issue of letters testamentary to the widow, and the interests of the plaintiffs respectively in the lands in question by virtue of mesne conveyances from Mrs. Dawson, the petition alleges that his children conveyed to Wheeler and Burr all of these premises; in consideration whereof Burr and Wheeler were to pay, deliver over and convey to the defendants, Dawsons, *one-fourth of whatever goods, effects, chattels or money* they should be able to extort or obtain from the plaintiffs or any of them, and that the said Burr and Wheeler should retain as their own the balance thereof. And Burr and Wheeler conveyed the premises to Giles, having in view the further purpose of "enabling such suits, actions and proceedings to be prosecuted in the United States Circuit and District Courts of the District of Nebraska", Giles paying no consideration, and being a man of no property; and that the deeds were never in fact delivered but were recorded in the county registry. Then follow averments of the marriage of Mrs. Dawson with Pickering, the claim of the defendants that thereby the estates bequeathed became vested in the testator's children and their grantees, and that they are threatening suits in equity and actions of ejectment in the courts of the United States and in the courts of this state. It is also alleged that some of the lands in question were conveyed by Mrs. Dawson, by and through the negotiations of Burr, acting as her confidential agent and attorney

and the agent and attorney of the testator's children, he representing that her conveyance passed the fee. The prayer is for an injunction restraining all legal proceedings in any court and questioning the title or possession of any of the plaintiffs, and claiming any of the rents, issues and profits of the premises, and making any deeds thereof. The petition further prays that the several conveyances made by the testator's children to Burr and Wheeler, and by them to Giles, be cancelled and annulled, and that it be decreed that the plaintiffs have a good, valid and indefeasible title in fee simple in the lots and parcels of land so held by them, free from all claims of any of the defendants.

It will be observed that the allegations show that the estates of the testator's children passed absolutely to Giles; and that the children were to have a one-fourth part, not of the lands which might be recovered, but of "whatever goods, effects, chattels or money" might be realized. Beyond this there is no pretense that any one of the defendants had any interests whatever in the premises in question, beyond a one-fourth of the money or personalty which should be realized from this wicked and fraudulent conspiracy. The estates went to Giles absolutely, he being liable only for this share of the plunder.

The nature of the action is also to be noticed. It is evidently brought under section 57, chapter 73, page 394, of the Compiled Statutes of Nebraska, which is as follows:

"That an action may be brought and prosecuted to final decree, judgment, or order, by any person or per-

sons, whether in actual possession or not, claiming title to real estate, against any person or persons, who claim an adverse title or interest therein, for the purpose of determining such estate or interest, and quieting the title to said real estate."

The only question is one of title,—the plaintiffs claim title, as has already been stated, by mesne conveyances from Mrs. Dawson, during her widowhood, against Giles, who claims an adverse estate or an interest therein; and the action is for the purpose of having such estate or interest of Giles declared to be invalid, and quieting the title to the premises in question in the plaintiffs. The action relates to the title, and nothing else. We have already seen that all of the allegations of conspiracy are immaterial, and should be laid out of view.

Such being the nature of the action, Giles filed his demurrer to the petition, and all of the other defendants who were served with process, filed their answer of disclaimer. It will be found on page 34, and is as follows: "That at and long before the commencement of this action, no one of them claimed or pretended to have, and has not now or claims or pretends to have, any right, title, or interest of, in or to the lands and premises in said petition mentioned and described, nor any part or parcel thereof, and these defendants, and every one of them, disclaim all right and title of, in, or to the same or any part thereof."

Such was the state of the case when Giles filed his petition to remove it to the Circuit Court and obtained his order therefor.

The rule is familiar, that a plaintiff in a state court cannot defeat a removal by impleading as a defendant a citizen of the same state as himself, who is not a necessary party. Having regard to the nature of this case, the same being, as already stated, in the nature of a bill *quia timet*, and involving simply a question of title, the proper parties were, as the statute provides, a plaintiff claiming title on the one side, against another claiming an adverse estate or interest, for the purpose of determining such adverse estate or interest, and quieting the title in the plaintiff.

In this case the plaintiffs answered the description of one of the parties, and Giles answered the description of the other of the parties, and none of the other defendants were within that description. The petition did not describe them as persons claiming an estate or interest adverse to the plaintiffs; its only allegation was that the Dawson children were to have a one-fourth interest, not in the lands which might be recovered, but in the "goods, effects, chattels, or money," which might be extorted from the plaintiffs. There is no pretense of averment that Giles was to reconvey to them any interest whatever in the lands or premises. There was no writing between any of the defendants, exhibiting an agreement in that behalf. There was nothing to show that there was any understanding or agreement between the Dawsons, Burr and Wheeler, and Giles or anything but a personal undertaking existing in parol, binding Burr and Wheeler and Giles to pay back to the Dawsons a certain portion of

what they might realize in money or personalty.

The case is not within the rule laid down by this court in any of its judgments, holding against the federal jurisdiction, because a party had transferred his interests to citizens of a state other than the plaintiff with a reservation for a return of what should be recovered.

Suppose Giles had gone farther than what is alleged in the petition, and had executed to the Dawsons a mortgage providing in terms that he would pay to them one-fourth of whatever money, goods, chattels and effects he should obtain from the plaintiffs; such a security would not differ from a mortgage to secure a specific sum of money, nor go farther to defeat the federal jurisdiction. Such mortgage would never have such effect. I may convey my estate in Nebraska to a citizen of Iowa by deed absolute on its face; I may take back a mortgage to secure the purchase price;—no one would contend that my grantee might not maintain an action in the federal court of Nebraska against a citizen of that state—either an action in ejectment, or a bill to quiet the title. That being the nature of the dealings between these parties, as set forth in the petition of appellants, Giles had a right to remove the cause against them.

But this right is made the more clear by the action of his co-defendants. They came into the state court and said that they had no interest whatever in the premises. They had a perfect right to do so, nor is their action open to criticism. It would have been perfectly competent for the plaintiffs to have taken a proper judgment in that

court upon the disclaimer, which would have been an effectual estoppel for all time against them, so that they never afterwards could have asserted any interest in the property. That judgment would in effect have given the plaintiffs the relief they sought,—namely, quieting the title in them against the disclaiming defendants.

The controversy, therefore, was one solely between the plaintiffs, on the one side, and Giles on the other, and was a proper one to be removed by him from the state to the federal court.

We do not overlook the allegation of the petition, that one of the conveyances to Giles was to enable suits to be brought in the United States Circuit and District Courts. But such an allegation would not defeat the removal. That is a question properly examinable in the federal court and was not determinable in the state court. Notwithstanding it, the state court did right in ordering the removal, and the federal court did right in entertaining the case, and proceeding with it until it should determine that question. It is very evident that this action was brought in the state court for the purpose of preventing Giles from prosecuting his action against Little, which had already come to this court and been decided there, and other similar actions of ejectment. The one thing desired by the plaintiffs was to escape out of a jurisdiction where they had met defeat, into another where they hoped for a different result. And in order to prevent the removal of their action, they impleaded with Giles citizens of the same state as themselves. The charge they make against us,

we make against them: against us it is unfounded, as the sequel shows; against them it is well founded. Our effort to maintain the case in the federal jurisdiction was proper and successful; theirs to withdraw it from that jurisdiction was improper and futile.

2. We have thus seen that the cause was rightly removed by Giles. We now proceed to show that the Circuit Court rightly retained possession of the case.

In the first place it is worth while to notice what the appellants did in the Circuit Court. The order to remove the case was duly made by the state court without opposition from the appellants. When the transcript was filed in the Circuit Court, an order was entered requiring the appellants to show cause, if any they had why the suit should not be proceeded with in that court, (p. 38.) All the cause shown was a motion to remand upon grounds stated, as follows:

"First. It appears by the pleadings filed in this case that Ezekiel Giles, the party who brings this case to this court, is not the real party in interest, but that L. C. Burr and H. H. Wheeler and the heirs of Jacob Dawson, deceased, are the real parties in interest in this case, and this action is brought to this court for their benefit.

"Second. It appears that all the parties to this suit who are real parties in interest are residents of the State of Nebraska, except Ezekiel Giles, who is only a nominal and colorable defendant herein.

"Third. It appears from the files in this cause that no sufficient petition or bond was filed in this case for the

removal of this cause from the district court of the State of Nebraska to this court, and that the pretended petition and bond which was filed was not accepted by the Court, as by the act of Congress in such cases made and provided."

That motion was never brought to the attention of the court, or in anywise acted upon, but the case proceeded through a somewhat complicated series of pleadings to the proofs. In the decrees there is no clause directly referable to the question of jurisdiction. This neglect on the part of the plaintiffs to question the propriety of the removal of the case, and the jurisdiction of the Circuit Court, deprives them of all just ground of complaint. For it is only a matter of fair dealing with the court and the parties, for one who is brought into the federal jurisdiction to make known his objection to it at the earliest moment. While it may be competent for the court at any time of its own motion to consider a question of jurisdiction, no party can complain who does not himself bring it forward for early inquiry.

After the issues were joined upon the original petition, and after Giles had filed his cross-bill, and most of the proofs had been taken, an amended bill was filed, setting forth a great variety of facts in order to show, among other things, that the conveyance to Giles was merely colorable. (p. 371.) All of the charges of this bill were denied by Giles in his answer thereto. When the original petition was filed in the state court, there were pending in the Circuit Court actions of ejectment brought

by Giles, one against Little, one against Owen and Oakley, one against Alexander, and one against Stuart. In these ejectments the defendants had filed pleas in abatement, alleging that the conveyance to Giles was colorable merely, and made for the purpose of enabling him to sue in the Federal Court. A stipulation was entered into on the part of the defendants in these ejectments, and of the plaintiffs in this suit, that the plea in the case against Owen should be tried, and the decision therein entered as the decision upon the pleas to the other actions at law, and also of the issues in this suit, so far as they were the same as those joined on the plea to be tried. (p. 116.) The trial was had accordingly, and resulted in a finding of the court that the plea had not been sustained; that the transfer to Giles was not made to enable him to prosecute the suit in the Circuit Court, and that so far as appeared from the pleadings and proofs produced on the trial, there was no legal impediment in the way of the plaintiffs prosecuting the action of ejectment. Thereupon an order was entered overruling the plea, and directing the cause to proceed to trial and final judgment notwithstanding the same. (p. 117).

That order remains to this day not reversed, modified or vacated. As between these parties it is the end of the question. Their stipulation to abide by it in this case is as effectual as if they had agreed that they would not question the transfer of the title to Giles, on the ground that it was made to enable him to sue him. It was more than that; it made the order in Owen's case a judgment upon the issues joined in this suit in favor of the validity

of the conveyance to Giles and the jurisdiction of the court.

3. But if we look into the testimony adduced on the trial of the plea in Owen's case, we shall see that the decision was correct. The facts do not show that the deed from Burr & Wheeler to Giles was made to defraud the jurisdiction. There is one circumstance indisputably established which disproves this charge beyond question: Burr testifies that he had drawn a petition in an action in which Giles was plaintiff, and Sherwin defendant, to be filed in the State Court when he saw the case of Brant vs. The Virginia Coal and Iron Co., reported in 3rd Otto, and that induced him to destroy that petition and bring the action in the Circuit Court; at that time he had no experience at the bar of that court; and after bringing the action he employed Mr. Woolworth (page 159, 165), then he brought the case against Bacon. (Bacon quit-claimed to Owen & Oakely the lot claimed by them, as appears by his deed, p. 102, and Sherwin conveyed to Stuart, as appears by this deed (page 104). Wheeler testifies to the same effect (page 153, 155). This testimony is uncontradicted.

We have a deed made by Burr & Wheeler to Giles. The charge is that this deed was executed in order to make a case of federal cognizance. But after the deed was executed and delivered, Burr & Wheeler drew their petition in Giles' name in the State Court, expecting to file it there and litigate the question there. The purpose to change the forum arose out of the discovery of Brant's

case; that discovery was after the petition to be filed in the State Court was drawn; it explains the bringing of the action in the Circuit Court by a circumstance which transpired after both the deed to Giles and the preparation for the action in the State Court. These facts are irreconcilable with the charge and conclusively disproves it. No amount of evidence to the contrary can establish the fraud against that undisputed fact.

No time will be wasted in reviewing the argument on the other side. It may be worth while to state some things which are suppressed in that argument.

It is said that the deed to Giles was not delivered to him. Burr says the negotiations with Giles were pending for some time, and the deed to him was drawn, bearing date the 27th of April, in the expectation that an agreement would be made. At last, a day or two before the 11th of June the sale was concluded, and the deed acknowledged on that day and sent to Mr. Giles by Mrs. Burr, his daughter, who went to her father's (page 100 and 101), and Mr. Giles says he got it about the 13th (page 176). So much for the contention that it was never delivered.

In the amended bill the agreements between the Dawsons and Burr and Wheeler, and between them and Giles are brought forward. In the first Burr and Wheeler agree to pay or convey to the Dawsons one-third of what they may obtain a good title to, either the property or its value, as they may elect. In the second, Giles agrees to pay Burr & Wheeler one-third of the value of what he

may recover and their indebtedness to the Dawsons. The deed to him and his agreement formed an election on the part of Burr & Wheeler to pay money to the Dawsons instead of conveying to them a portion of the lands, and resolved the arrangement into a simple one, to pay the consideration in cash. This left the Dawsons, as well as Burr & Wheeler, with no interest in the lands. Accordingly they could not claim an interest adverse to the plaintiffs so as to justify the action *quia timet* against them. Giles was the only proper party to the action, and they were impleaded merely to withdraw the case from the federal jurisdiction.

Conversations with Giles and with Burr are brought forward to support the charge that the deed was a fraud on the jurisdiction. Those of Giles do not give the least countenance to the contention. The occasion of them was sought by lawyers. Witnesses were provided who would be able to testify to his admissions. The effort to draw him into them was pre-arranged and skillful. He was not put on his guard by any information of the purpose of his questioners. Without suspicion, at first he spoke at random, even then making no statement which can justly be interpreted against him. To be sure, these witnesses testify that he said he had not the deed; nor had he, for, as was quite right, he had sent it to Burr. They put in his mouth other statements which he and his son contradict. The result of the expedition to him hardly repaid the trouble.

Burr contradicts all statements attributed to him. He and Giles were believed by the Judge who tried and over-

ruled the plea, and this Court will not review his decision. And here is a point to be noted. Had the ejectments, to enjoin which this equity suit was brought, been tried upon the plea, and judgment been rendered for Giles, upon writ of error from this Court, the inquiry would not have been permissible whether the decision was correct or not, for there certainly was evidence to support it. When these appellants stipulated to abide by the decision on the plea in Owen's case, so far as it was applicable to the issues here, they concluded all inquiry on this appeal which could not be made on a writ of error to review that judgment. The rule on a writ of error should be the rule on this appeal, and the decision made by the judge who had the witnesses personally before him, so that he could observe their manner as well as their words ought to be accepted. The correctness of it cannot be questioned.

There is another aspect of the case which may not be lost sight of in considering the question of the jurisdiction of the Circuit Court to proceed to the final decree which it entered. Thus far we have considered the controversy between these parties as the same was raised by the original petition, removed from the state to the Circuit Court. The other view which we present is that of an original suit in equity, brought in the Circuit Court by Giles against certain of the plaintiffs in the original petition and appellants here.

In this controversy Giles pleads by what is called in the proceedings, his cross bill. We submit that even if the original bill were improperly removed from the state

to the circuit court, which is conceded only for the purposes of arguing this point, the decree rendered upon the cross bill should be sustained and enforced. Unquestionably, if Giles had filed what is called his cross bill as an original bill, the suit would have been properly constructed for the purposes of the jurisdiction of the Circuit Court. On the one side we have him as the plaintiff and a citizen of Iowa, and on the other the defendants, each and every one of them, citizens of Nebraska. The bill, too, was a proper one for equitable relief. As such it may be supported upon two grounds, each of which was sufficient for the purpose. It sets forth Giles' title as derived from the testator, alleging the will and its probate, and the issue of letters testamentary to Mrs. Dawson, and her remarriage, and conveyances from the childrenof the testator to Giles, and claims on his behalf that he is entitled to the possession, because seized in fee, of the premises. It then proceeds to allege the adverse claim of the defendants; that is to say, that they claim by virtue of divers mesne conveyances from Mrs. Dawson, made between the testator's death and her remarriage. This was a case within the Nebraska statute, which is above set forth. Objection is made to it by the appellants on the ground that it is in the nature of a bill in ejectment, and shows adequate remedy at law; but that very question was determined in favor of the equity jurisdiction of the federal court in *Holland vs. Holden*, 110 U. S. 15, which was an equity suit arising under this very statute.

It may be further said that the relief prayed in this

bill is not simply to quiet the title of the plaintiffs. It is more specific than that, to be sure; but that is its effect; and more particular relief was prayed in order to enable Giles to spread upon the county registry the evidence of the extinguishment of the appellants' adverse claims.

We have, therefore, in this bill, if it may be regarded in the nature of an original bill, a controversy between citizens of different states, and therefore within the federal jurisdiction, and also one of equitable cognizance. The only question remaining is whether this decree may be supported as between the parties to Giles' bill as if it were an original bill.

It is matter of common knowledge that cross bills may be filed for two purposes: first, for the purposes of discovery; second, for purposes of equitable relief in behalf of a defendant in an original bill. Formerly the rule was imperative, not only that the controversy raised by the plaintiff in a cross bill should respect the same matter as that complained of in the original bill, but also that the relief sought should naturally flow from the facts appearing in the original bill. There was in truth but one controversy,—the plaintiff claiming relief in his behalf upon his view of it, and the defendant claiming relief in his behalf upon his adverse view of it.

The rule was that the dismissal of the original bill carried with it the cross bill; but at an early day it became evident that in many cases a plaintiff might not be entitled to relief, and yet a defendant ought to have an affirmative decree. The first instances of such cases which the Eng-

lish books report were bills for specific performance, where the defendant denied the contract alleged, but asserted another contract made at the same time relating to the same matter, and prayed its specific enforcement. In such cases the original bill was dismissed and relief granted upon the cross bill. This cross bill is within the analogy of such cases; both parties bring forward the will, one claiming a title upon one construction and the other a title upon another construction: that of the original plaintiffs here was unsound; that of Giles was sound. He therefore was entitled to his relief, and it should be granted to him.

If, then, we strike out the whole of the original bill and the proceedings based upon it, we have the cross bill, presenting a distinct, independent and self supporting controversy, upon which the decree was passed, finally settling the rights of the parties. The mere fact that it was heard with the original bill, and the further fact that it is called a cross bill, and the third fact that it relates to the same property as is claimed in the original bill, cannot be suffered to vitiate the relief which, after so long a contention, Giles has at length succeeded in obtaining. It may be stated in passing that the appellants insist that the memorandum of the court made on the 23rd of February, 1883, which will be found on page 484, is a decree dismissing the original bill, and that disposed finally of the cross bill and all rights depending thereon. It is apparent that the court did not so intend that memoradum, because the cross bill is expressly retained, and the final decree was rendered in the two cases, not only by implication but in express terms, and was

that the original bill be dismissed. (See page 488.)

The decree shows plainly that the court intended to retain the substantial controversy, whether we consider it as arising on the original or the cross bill, for final decree, which was entered on the 14th of June 1883. This court will not greatly trouble itself with the details in the course of this protracted and complicated litigation, but will look rather to see that at last the rights of the parties were truly adjudged.

Passing by, then, these criticisms upon the course of the procedure, and observing that the cross bill was properly constructed as a case of federal jurisdiction and equitable cognizance, and may be maintained from the time it was filed until the final decree, without regard to or dependence upon the original bill, and that that decree itself is perfectly and in all respects supported in its findings, declarations and orders, independently of the original suit, this court may treat it as an original suit.

FOURTH POINT.

It is further insisted against Mr. Giles that he ought not to have relief against these appellants because he holds by a contract which is vicious, because, as is claimed, it is champertous. In the contention of the learned counsel for the appellants, that the rule of the common law that a conveyance of property held adversely is void, is operative in the State of Nebraska, they have overlooked the familiar provision contained in Section 31, of Chapter 73, of the Compiled Statutes, which will be found on page 391, and is as follows:

"No grant or conveyance of lands, or interest therein, shall be void for the reason that at the time of the execution thereof, such lands shall be in the actual possession of another, claiming adversely."

We submit that that statute shows a very decided disposition on the part of the people in Nebraska, to change the rule of the common law upon contracts alleged to be champertous. And besides the criminal law of that state has been very carefully codified and contains no provision on the subject.

This Court has held that attorneys and counselors may recover agreed compensation for their services, which their clients and themselves make dependent upon success.

Stanton vs. Embrey, 93 U.S. 548.

Wright vs. Tebbets, 91 U.S. 252.

Trist vs. Childs, 21 Wall 450.

But this contract was not champertous in any proper sense of the term. The whole subject is gone over with great care and particularity by Judge McCrary, in his judgment in the case of Courtwright vs. Burns, 3 McC. 60, and the elaborate note of Mr. Thompson on page 68. To reproduce it here or with equal thoroughness, would draw out this argument to a very great length. We must content ourselves with referring the court to the judgment above cited, and the note thereto.

FIFTH POINT.

It is further insisted that there is an estoppel against Mr. Giles claiming title to the premises in question, as against the appellants or any of them.

Before proceeding to the discussion of this point, it is well to correct a mistake into which the learned counsel for the appellants have fallen. They repeatedly speak of the conveyances between the Dawsons and Burr and Wheeler, and Burr and Wheeler and Giles, as quit-claims merely. The words of grant in all these deeds are "grant, convey and confirm" (pages 91, 94, 96), and there is an express statement and representation that the grantors are seized in fee simple.

We pass now to the conveyances of Mrs. Dawson, under which such of the appellants as are entitled to be heard here, claim. At page 350 we have a copy of her deed to Cody. There is no evidence whatever that Cody did not know of the will and its proper construction, or that any representations were made to him when he purchased. The appellants Little, Alexander and Stuart claim here the premises conveyed to Cody. How their title was acquired does not appear. It may be supposed that it comes from Cody; otherwise they have shown no title whatever. There is no evidence showing that these appellants did not know of the true state of the title, or that they acted upon any representations whatever of the Dawsons, or any of them, or any person acting for them. On the other hand the deed to the appellant Stuart is a quit claim, and dated October 14th, 1881 (page 104), which was while the case of Giles vs. Little was pending in this court, which he knew all about.

These parties, therefore, cannot claim the protection of an estoppel; and we have seen that they are the only

persons who can be heard on this appeal. If upon Hawley's right to be heard here the court should not be with us, it may be necessary to show that there is no estoppel in his favor. If your Honors will read his testimony, at pages 224-229, and the testimony of Mr. Burr, at pages 314 and following, you will see that Burr's opinion was taken with regard to a lien upon the premises for taxes, and all he said was referable to that. Hawley had negotiated for the purchase of the premises, and finding them covered by a tax claim, applied to the firm of Webster & Burr. They were not employed to investigate Mrs. Dawson's title, nor was any of the conversations had between the parties directed to it, nor did they know of the contents of the will or speak with reference thereto. All of Burr's statements were general, except with reference to the tax title, which he undertook to set aside for $125. Hawley knew very well to what Burr's expressions were directed, and at the same time had full means of information of the will, for it was then of record. He has himself to blame if he was guilty of inconsiderate neglect.

Brant vs. Virginia Company, 93 U.S. 326.
Brush vs. Hare, 15 Pet. 99-111.
Story's Equity Juris., Sec. 200.

We might well content ourselves with the point established already, that the other appellants here have not such an interest as supports this appeal; but it may, perhaps, be worth while to show decisively that even these persons have no ground for claiming the protection of the alleged estoppell.

It is charged that Mrs. Dawson gave to her son John H. a power to sell these estates, and that in doing so he represented that she had a good and perfect title, and that the purchasers bought and paid for their estates relying on his representations. Let it be admitted for the purpose of this argument, that were he alive he would be estopped to dispute those statements; yet we would not be bound thereby. And for this reason: both parties allege in their pleadings that he died in 1871, and that Mrs. Dawson was remarried in 1879. The will provides that upon her marriage the testator's surviving children should take the estates; but if any died before that event then the issue of such deceased child should take his interest. These terms did not give any interest to a child of the testator unless, first his mother married a second time, and, secondly, he survived that event. Dying before that event, John H. was never seized of an estate in remainder, nor does Giles derive title through him. The appellee's title comes to him through the brothers and sisters of John H. only, under the will. As we do not claim under him, we cannot be affected by his acts. The deeds introduced in evidence at page 238 et seq., show the following lots to have been conveyed by John H. Dawson as attorney in fact of Mrs. Dawson, block 41, block 33, lots 4, 5, 6 in block 38, blocks 32 and 39, lots 3 and 4 in block 47, lots 7, 8, 9 in block 31, lots 1, 2, 3 in block 38, lot 4 in block 31. There can be no estoppel as to them and they may be laid out of view for the present purpose.

We pass now to the representations Burr is alleged to

have made with reference to lots in South Lincoln. It appears that Mrs. Dawson was seized of a tract of land in her own right. This she laid out as an addition to Lincoln and called it Capitol Addition. As already stated, she also laid out another addition called Dawson's Addition to South Lincoln, upon lands of which the testator died seized. It is important to distinguish these two tracts, for representations made by Burr in respect of Capitol Addition, can not be attributed to the addition to South Lincoln, to which beyond all question Beach refers in his testimony on page 230, cited by appellants on page 40 of their brief; for he says distinctly that there was a sale of property in South Lincoln at that time, and that he does not recollect of any statements or representations made there (page 231). So that the statements and representations he had previously mentioned were at a sale of lots in Capitol Addition and with reference thereto.

If now we take the list of lots in Dawson's Addition to South Lincoln, and the names of the respective claimants, who trace their title from Mrs. Dawson by deeds made by Burr as her agent, we shall find that the following of these parties do not testify, nor adduce any testimony whatever in their behalf showing any representations made by Burr at or before the time of their purchase; or that they bought relying upon any statements or acts whatever by which he or any of the Dawsons could in any wise be affected; J. A. Buckstaff, lots 5 and 6 in block 29, lots 7, 8 and 9 in block 32, lots 5, 6, 7, 8 in blocy 35. George D. Camp, lots 3 and 4, block 29, Eli-

zabeth Padden lot 5 in block 31. D. B. Alexander, lot 3 block 31, Joseph S. and Henry V. Hoagland, lot 2 block 31, or C. B. Hooper, lot 1, block 31. Samuel Arbuckle, lots 9, 10, 11 and 12 in block 33, lot 10 in block 35; Henry Childer, lot 8, block 33, A. J. Sawyer, lot 7 block 33, and lots 5 ond 6 block 47; Hannah Selwood, lots 3 and 4 block 35, Charles Hanna, lot 9 block 37, William H. Rundell, lots 7 to 12 block 38, Charles Snowden, lots 7, 8 and 9 block 47, Josephine St. Louis, lots 7 and 8 block 42, Ellen M. Miller, lots 4 and 5 block 42, Hellen Weber, lots 1 to 12 block 43, Allen Coggswell, lots 7 and 8 block 44, Mary E. Maloney, lot 4 block 44, Bartlett F. Loath, lots 11 and 12 block 45, Francis D. Howell, lots 8 and 9 block 45, Lavender S. Howell, lot 7 block 45, Samuel D. Bacon, lots 1 to 6 block 45, and D. D. Muir, lots 7 and 8 block 29. D. C. Kinsell, lots 1 to 12 in block 34, Martha E. Snowden, lots 1 to 5 block 40, Charles C. Snowden, lot 1, 2, 3, 9, 10, 11, 12 block 42, Christian Bohlman, lots 10, 11, 12 block 44, Patrick Lyons, lot 9 block 44, Henry S. Gordon, executor, etc., lots 1 to 12 block 46, Samuel L. English, lot 10 block 47, D. D. Muir, lots 3, 4, 11, 12, block 48, George W. Severance, lot 10 block 48, Rhoda A. Prindell, lots 5 and 6 block 49, and Mina W. Brown, lots 1 to 4 block 49. And no deed from Mrs. Dawson made by any agent is shown to many of these parties. There is testimony of Jesse P. Chipman of statements by Burr to him, but he is not a party to this suit. His name will not be found in the title to the original petition or among the defendants in the cross-bill. All the testimony

connecting Burr with the purchase of Alexander C. and D. C. Heustis, lots 5, 6, 7 and 8 block 36, or lots 1 to 11 block 37, are two letters of Burr, which will be found on pages 306, 308. Those letters were written after Mrs. Dawson's deed to them. The deed will be found on page 248, and was dated February 18th, 1875, and was acknowledged on the same day. The first letter was dated February 22nd. This shows that Burr made no representations at the time of the purchase, nor do the letters themselves any where refer to the title of the "widow Dawson." Adam Bax and Louisa Bax claim lots 1 and 2 in block 47, but they are not parties to the suit; their names are not mentioned in the title of the original petition nor are they among the defendants in the cross bill. The testimony of Adam Bax was taken and will be found at pages 322–3: but he distinctly states that Burr's statements to him that Mrs. Dawson's title was good might not have been heard by others, and under cross examination he says that he did not buy any property.

We pass now to the purchase of Van Dorn and Lashus. William G. Van Dorn testifies at page 213, that he negotiated that purchase, and that Burr stated that Mrs. Dawson's title was good; and on the strength of this he purchased. His whole account of the transaction is met by the testimony of Burr at pages 316, 317. He distinctly denies all conversation about or even knowledge of the Dawson will, until after that transaction.

The testimony of McManigal, McLaughlin, A. D. Burr and the agreement between Mrs. Dawson and Lom-

bard, and Burr's letter to Lombard may be summarily disposed of by the short statement that those persons are not parties, and that whatever may have been said to them by Burr is not shown to have come to the knowledge of any of the plaintiffs. So that it could not have operated to induce any of them to purchase. At the same time the testimony of these witnesses is contradicted.

We do not deem it worth while to occupy the attention of the court with a statement of the elementary principles of the doctrine of estopell. Every lawyer understands that a statement by a party does not conclude him unless made under such circumstances that it influenced the action of the other party who seeks to close the mouth and bind the conscience of him who makes the statement. Here none of these plaintiffs are satisfactorily shown to have been influenced to make their purchases by anything Burr said or did; what he may have said or done to others is quite immaterial here. We do not claim that it is necessary that the declaration should be made to the party who acts on it or in his presence, nor that the declaration should be intended to come to the knowledge of any particular person; what we do insist upon is, that he who claims the benefit of the estopell must clearly show that he was influenced by the declaration. It is not enough to show that the declaration was made to a third person, and stop there; but another step must be taken, and it must be shown that this statement came to the knowledge of the party pleading the estopell, and that he acted upon it. Nothing of that sort is shown here.

SIXTH POINT.

The appellants claim that by reason of the non-age of some of the Dawson children, and of some of their pretended acts, the interests of Mr. Giles were extinguished. It is claimed that Mrs. Tillman, who is mentioned a second time in the title of the petition as M. C. Dawson, was not of age when she made her conveyance to Burr and Wheeler. Mrs. Dawson, under the name of Editha Jane Dawson Pickering, testifies at page 417, that Melita Casanda was born March 27, 1864. Her deed to Burr and Wheeler was acknowledged on the 3rd of December, 1879, so that at that time she was fifteen years and nine months old. At the making of that deed she had not attained her majority. But on the 25th of December, 1881, she married Mr. Tillman, (page 411) and on the 2nd of January, 1882, she conveyed these premises directly to Mr. Giles, (p. 408). She was then eighteen years old. In Nebraska a married female becomes of age at sixteen. "In case a female marries between the age of sixteen and eighteen her minority ends." Compiled laws ch. 34, sec. 1, p. 291.

It further appears on page 417 that William Ross died on the 14th of November, 1880, although he is named as a defendant in the original action which was brought after his death. His son Carlton was brought into the suit while it was pending in the Circuit Court. Of course his interests in the premises were not greater than those of his father at the time of his death, and he was, for reasons already shown, not a necessary or even proper party. Carl-

ton's introduction into the case while pending in the Circuit Court cannot affect the jurisdiction in any way.

Minnie S., named in the title to the original petition, as M. S. Dawson, was born on the 9th of November, 1866, (p. 417.) She was of non-age at the time she made her conveyence to Burr and Wheeler. It is claimed that she disclaimed that conveyance by what purports to be a certified copy of an answer and cross petition filed in the district court of the state, which will be found at pages 278, 285. With respect to this paper a word or two may be proper. It purports to have been filed in the state court on the 21st of February, 1882, while the papers for the removal of the original petition from the state to the federal court were filed on the 20th of the same month, (page 37.) The order for removal was made by the state court on the 1st of March following. This pretended answer was never filed in the Circuit Court as a pleading; it was not brought there in the transcript from the state court, nor was any suggestion ever made by any of the parties that the whole record was not rightly brought up. It came into the record by introduction as evidence. Notwithstanding it, the cause proceeded from first to last without the least reference to it; the Circuit Court disregarded it entirely by appointing a guardian of this young lady and receiving her answer through him(p. 483.)

It is evident that the court did not consider it of importance in the controversy. This paper does not operate a disaffirmance by Minnie S. Dawson of her deed to Burr and Wheeler, for two reasons: In the first place it is not

her personal act, nor does it appear to have been authorized by her, or so much as known to her. It is signed by Reavis as attorney for the persons purporting to make the answer, although they were already represented by other counsel, whose action in the cause was never disclaimed or his authority questioned, and whose proceedings were inconsistent with the purpose of these parties to avoid their deed. It is sworn to by Albert L. Dawson alone. Minnie S. Dawson is in no wise directly connected with it. It cannot be considered in any such wise her personal act as to give it effect as a disaffirmance of her deed.

Tucker vs. Morland, 10 Pet. 58.

Another objection to this paper is, that it was made by the infant during her non-age. As already stated, she was born November 9th, 1866. (p. 471.) The answer purports to have been filed on the 21st of February, 1882, so that she was at that time sixteen years old and was therefore incompetent to ratify or dissaffirm her deed.

In Zouch vs. Parsons, 1 Bl. Rep. 575 reported more at large in 3 Burr, 1794 to 1809, Lord Mansfield ruled several points upon which his judgment has not passed unquestioned, but among them he held that the disaffirmance of the infant's voidable act must be after he attains his majority, and that has been accepted as the law ever since.

SEVENTH POINT.

We proceed now to consider the objections of the appellants to the clauses of the decree touching their rights as occupying claimants. It is important, in the first place,

to ascertain the principles upon which this inquiry should be conducted. There have been several statutes in the state of Nebraska which lay down different rules, not only one from the other, but from that of the equity jurisprudence.

In 1873, an act was passed entitled "an act for the relief of occupying claimants of lands." It will be found on page 365 of the Compiled Statutes of 1881, being chapter 63. A part of it is set forth on pages 63, 64 and 65 of the brief of the appellants.

On the 23rd of February, 1883, an act was passed, entitled "an act for the relief of occupants and claimants of real estate, and to repeal an act entitle 'an act for the relief of occupants of lands,' approved February 21st, 1873."

It is interesting to observe that this last act received the approval of the governor upon the very day that Judge Dundy filed the memorandum for the decree upon the original bill, which has been so frequently mentioned. (See page 484,) and that the act, in its 11th section, in terms provided that it should apply to all suits now pending, and also in suits now disposed of. The other provisions of the act greatly enlarge the rights of unsuccessful occupying claimants of lands. The coincidence is singular, and suggests to the mind the idea that the act was passed with a view to this case. These appellants seem to have divined what the court would do, and to have resorted to the legislature for relief; just as they had upon a former occasion undertaken to withdraw the controversy

from the federal court, where they had met defeat, to the state court, where they thought they might have another chance. If this be so, they sadly overreached themselves; for by the 12th section of the act of 1883, it is provided, "an act entitled an act for the relief of occupying claimants of lands, approved February 21st, 1873, be and the same is hereby repealed."

The case then, stands thus: the act of 1873 is repealed, and the act of 1883 is inapplicable. The repealing clause of the act of 1883 leaves the appellants without the benefit of the act of 1873, upon the general principle that the effect of a repealing statute is to obliterate the statute repealed as completely from the records of the legislature, as if it had never been passed, and it must be considered as a law that never existed, except for the purpose of those actions or suits which were commenced, prosecuted and concluded while it was in force. Such was the language of Tindal, C. J. in *Key vs. Goodwin*, 4 Moore & Payne 341, and is elementary. Applied to judicial proceedings, which derive their force from the statute, the repeal extinguishes the right of action.

Yeaton vs. U. S., 6 Cranch 281;
Morris vs. Crocker, 3 Howard 429;
Butler vs. Palmer, 1 Hill 324;
Stoever vs. Iumell, 1 Watts 258.

That the act of 1883, so far as it is applicable to this case, is unconstitutional and void, was ruled in a case precisely similar, by this court.

Green vs. Biddle, 8 Whea. 1, 77.

But I do not choose to leave the question of the statute here. The act of 1873, which is set forth on page 53 of the brief for the appellants, does not describe the appellants. They were not occupying claimants within the description of any of the classes of persons, named in the statute. When they made their improvements they were life tenants; and if their rights are to be determined by such their character, they are not entitled to expenditures, even for permanent improvements.

Washburn on Real Prop., 1 Vol. p. 123.

But it is said that the appellants, although they were merely life tenants, were in possession, and made the improvements innocently and without knowledge on their part that their estates were limited, but honestly believed that they held in fee. As to Stuart such was not the case, for the master expressly found that he bought by quit-claim, and with actual knowledge that Giles was asserting his title in the courts under the will of Jacob Dawson. (See p. 546, 547.) He, therefore, cannot urge any such equitable consideration, and the decree was erroneous in allowing him anything for improvements. Unfortunately for Giles, the amount in question between him and Stuart on this point, was insufficient to support an appeal to this court. Nor is the case greatly different as regards Little and Alexander. The master finds that it does not appear that they had more than constructive notice of the terms of the will, as given by the record and probate thereof in Lancaster County. But constructive

notice is sufficient. In law they did know of the will, its terms and proper construction. If the record does not show that they did not have actual notice of it the fault is their own. Little was on the stand three several times, and testified particularly as to the improvements; but he does not say any where one word to show that he did not know of the will and its contents and true construction. Alexander did not testify and there is no testimony on the subject in her behalf.

It was incumbent upon them to prove their ignorance of the will, if they could do so. At law, they were entitled to nothing for their improvements as against their remainder-men. If they desired to escape the rule of law, upon an equitable principle, resting upon their ignorance of the will, they should have proved it, and failing to do so the fact must be found against them.

There is another principle which cuts out their rights to the improvements. As already shown, their improvements were made while they were rightly in possession of the premises as life tenants. Cody erected the building on the lot claimed by Alexander in 1871. Little erected his building in 1878. (See master's report, p. 542, and Little's testimony, p. 221.) Mrs. Dawson was remarried in December, 1879. These parties were not holding adversely to the Dawson children at that time, and they had a right to build and occupy the premises as they did. It would have been an impertinence on the part of the children to have forbidden the building, or to have notified Alexander or Little that they were liable to lose their im-

provements. No duty devolved upon the children at that time; doubtless, they did not then suppose that their mother would marry a second time, or that the contingency in their remainder would take place. They had a right to suppose that the life tenants were willing to take the chances upon that contingency. However this may be, it is certain that the life tenants were not then holding adversely to them, and for that reason they were not within the terms of the statute.

Wales vs. Coffin, 100 Mass. 177–180.

Now I pass to another view of the statute, and submit that if each distinct class of persons mentioned in it is regarded, none of these appellants come within its terms. These classes are as follows: An occupying claimant, in quiet possession of lands 1. for which he can show a plain and connected title, in law or equity, derived from the records of some public office; 2. claiming title as aforesaid, that is, by the plain and connected title, etc., above described, derived from such records, or by deed duly authenticated or recorded; 3, holding such lands under sale on execution, against any person claiming title as aforsaid, derived from the records of some public office, or by deed duly authenticated or recorded; 4. holding under any sale for taxes; 5. holding the same in good faith under a deed or sale made by executors, administrators or guardians, or by any other person or persons in pursuance of an order of court, or decree in chancery, where lands have been directed to be sold, and the purchaser or purchasers thereof, have obtained title thereto or

possession of the same without any fraud or collusion on his, her or their part.

These five are all the classes of persons described in the act, and none of the appellants are within them. Little stands, perhaps, in the strongest position of any, and we will take his case as an illustration. He cannot show a connected title from the records of a public office, for that public office is the probate court, and the Dawson children are the only persons who can show a connected title from those records. That which Little claims cannot be connected therewith, because it was determined by Mrs. Dawson's remarriage. He is not within the second class because assuming that his title came to him from Cody, Cody did not claimas aforesaid, that is, by aconnected title derived from the records of a public office, for the reason already stated. Nor did Little claim by a duly authenticated or recorded deed, from Cody. It has been stated again and again that Cody's deed to Little is not shown, so that we are not able to say that it was duly authenticated or recorded.

Reynolds vs. Cordery, 4 McLean 159.

It is not pretended that either of these persons are within the other descriptions of the act of 1873.

We have thus shown decisively several reasons, each quite sufficient in itself, for our proposition, that the rights of these parties find no support in the statutes of Nebraska.

We pass now to the rule of equity. In *Green vs. Biddle*, 8 Whea. 1, this court in effect held, that a bona fide purchaser of an estate, in possession, ameliorating it

by lasting improvements, when ejected by a better title, is only entitled to an allowance therefor to the extent of the rents and profits with which he is chargeable. Mr. Justice Story, at the circuit, expressed another view. (*Bright vs. Boyd*, 1 Story, 478). Many of the state courts have allowed for such improvements, but their judgments have almost always been supported by statute.

It is not necessary for the purposes of this case to determine what the equity rule should be. Even if Judge Story's opinion be taken, these appellants have none of them shown themselves to be within it. All of the cases in which the subject has been discussed have held, that the improvements must be made by a party holding adversely to the successful title, and in the honest belief that he held the estate. And relief has been denied in a great many cases where there has been a failure to prove the last of these facts.

Ramsden vs. Dyson, L. R. 1 H. L., 129, 141.
Dart vs. Hercules, 27 Ill ; 446.
Green vs. Biddle, supra.

We have already shown that Little and Alexander were affected by constructive notice that their title was limited by the contingency of Mrs. Dawson's remarriage, and that they have failed to show that they had not actual notice thereof.

It seems hardly necessary to notice the criticisms of the learned counsel for the appellants upon the decree, by which an allowance was made for improvements. They obtained by that decree much more than they were entitled to, as has already been clearly shown, although the allow-

ances to them respectively were insufficient to support Giles' appeal in respect of them. But it may, perhaps, be worth while to say, that the testimony of their numerous witnesses, to which the master attached no importance ought not to have been taken into account as against the testimony of Hiltner (page 380), Roberts (pages 231-326), or Cook (336).

As far as the point made against us, that we were not entitled to the rents and profits until our cross-bill was filed, this may be shortly stated: that until Mrs. Dawson's second marriage, in December, 1879, we were not entitled to the possession of the premises. Thereafter we were entitled as remaindermen, without regard to the question of improvements. That demand was made and these parties advised thereof shortly after our contingent remainder ripened into the fee, is beyond doubt. We proposed to bring several suits in ejectment, one against Sherwin, one against Bacon, and finally, on the 23rd of August, 1880, we commenced the action against Little, with which your Honors are familiar. From that day our right to the rents and profits was perfect; and it was from an even later date that they were allowed to us. The appellants have no just ground of complaint against the clauses of the decree touching their rights as occupying claimants.

EIGHTH POINT.

Objection is made to the clause of the decree allowing to the guardian *ad litem* five hundred dollars, to be taxed in the costs, but such matters are not subject to inquiry here.

L. C. BURR,

Solicitor for Appellants.

J. M. WOOLWOTH, *Of Counsel.*